BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

CLOVIS UNIFIED SCHOOL DISTRICT AND CRESCENT VIEW WEST PUBLIC CHARTER SCHOOL.

OAH CASE NUMBER 2023020131

ORDER DENYING CLOVIS UNIFIED SCHOOL DISTRICT'S MOTION TO UNEXPEDITE HEARING AS MOOT

MARCH 15, 2023

On February 3, 2023, Student filed a Due Process Hearing Request, known as a complaint, against Clovis Unified School District and Crescent View West Public Charter School. On February 21, 2023, the Office of Administrative Hearings, referred to as OAH, granted Student's motion to amend the complaint. Student's corrected amended complaint was filed on February 21, 2023.

On February 22, 2023, based on issues asserted in the corrected amended complaint, OAH issued a Scheduling Order and Notice of Expedited and Non-Expedited Due Process Hearing and Mediation, Scheduling Order. The Scheduling Order set this

matter for expedited prehearing conference on March 13, 2023, and expedited hearing for March 21, 22, and 23, 2023. An amended scheduling order was issued on March 2, 2023, that did not change the expediated prehearing conference or hearing dates.

On March 8, 2023, Clovis filed a motion to unexpedite this matter and vacate the expedited dates. Clovis served the motion to unexpediate to Student on March 12, 2023. On March 14, 2023, Student filed a response claiming Clovis' motion was untimely, that truancy constitutes a violation of code of conduct pursuant to the IDEA, and that Student sufficiently alleged a basis of knowledge in the complaint.

APPLICABLE LAW

A parent of a child with a disability who disagrees with any decision by a school district regarding a change in educational placement of the child based upon a violation of a code of student conduct, or who disagrees with a manifestation determination made by the district, may request and is entitled to receive an expedited due process hearing. (20 U.S.C. § 1415(k)(3)(A); 34 C.F.R. § 300.532(a) (2006), All subsequent references to the Code of Federal Regulations are to the 2006 version.) An expedited due process hearing before OAH must occur within 20 school days of the date the complaint requesting the hearing is filed. (20 U.S.C. § 1415(k)(4)(B); 34 C.F.R. § 300.532(c)(2).) The procedural right to an expedited due process hearing is mandatory and does not authorize OAH to make exceptions or grant continuances of expedited matters. (*Ibid.*) A matter can only be unexpedited or continued if no issue is alleged that is subject to an expedited hearing, if the student withdraws the issues in the complaint that triggered the expedited hearing, or if the student elects to challenge the change of placement under title 20, section 1415, subdivision (b)(6)(A) and not

subdivision (k). (*Molina v. Bd. of Educ. of Los Lunas Schools* (D.N.M. 2016) 157 F.Supp.3d 1064, 1068-1071.)

DISCUSSION

An expedited prehearing conference was held on March 13, 2023. In the Order Following Expedited Prehearing Conference the undersigned found that Student's issue met the threshold requiring an expedited hearing to be held and found there were sufficient facts in Student's complaint that allege Clovis had a basis of knowledge that Student was a child with a disability. Both contentions are subject to proof at hearing. As a result, Clovis' motion to unexpedite is moot based on the findings at the expedited prehearing conference.

ORDER

1. Clovis' motion to unexpedite the hearing is denied.
2. The expedited hearing shall proceed on the expedited issue as stated in the March 13, 2023, Order Following Expediated Prehearing Conference and Order Denying Crescent View's Motion to Unexpediate as scheduled on March 21, 22, and 23, 2023.

IT IS SO ORDERED.

Marlo Nisperos

Marlo Nisperos
Administrative Law Judge
Office of Administrative Hearings