BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

MOUNT SHASTA UNION SCHOOL DISTRICT.

OAH CASE NUMBER 2024120488

ORDER FOLLOWING PREHEARING CONFERENCE FOR EXPEDITED HEARING BY VIDEOCONFERENCE, GRANTING STUDENT'S REQUEST TO UNEXPEDITE ISSUES AND VACATE EXPEDITED HEARING DATES

JANUARY 14, 2025

On January 13, 2025, Administrative Law Judge Robert G. Martin, Office of Administrative Hearings, held an expedited prehearing conference by videoconference. The Administrative Law Judge is called an ALJ. The Office of Administrative Hearings is called OAH. The prehearing conference is called a PHC.

Attorneys Michelle Wilkolaski and Ryan Song appeared on behalf of Student. Attorneys Kaitlyn Tucker and Rebal Halabi-Boutros appeared on behalf of Mt. Shastra

Union School District, referred to as Mt. Shasta. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

HEARING DATES, TIMES, AND LOCATION

Student's due process hearing request filed December 12, 2024 included allegations in Student's Issue 9 that Mt. Shasta removed Student from school for disciplinary reasons for more than 10 school days without holding a manifestation determination meeting, failed to find that Student's conduct was a manifestation of his disability, and failed to conduct a functional behavior assessment of Student to be used by his IEP team to develop or modify a behavior intervention plan for Student. Based on these allegations, OAH scheduled both expedited and non-expedited hearings.

On December 23, 2024, Mt. Shasta filed a motion to vacate the expedited hearing, on grounds Student's due process hearing request did not appeal a manifestation determination, allege Student was currently removed from his educational placement based on code of conduct violations, or allege that disciplinary proceedings were pending against Student. Student did not respond to Mt. Shasta's motion. OAH denied Mt. Shasta's motion to vacate, finding Student's Issue 9 was subject to the expedited hearing time frame, unless Student withdrew the issue or informed OAH Student's allegations were raised under United States Code title 20, section 1415, subdivision (b), and not section 1415, subdivision (k).

At the expedited prehearing conference, Student requested that the expedited hearing dates be vacated, on grounds Student intends to pursue the issues raised in Issue 9 under United States Code title 20, section 1415, subdivision (b)(6)(A), and not section 1415, subdivision (k).

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 (*Molina*).)

Here, Student has asserted the intent to pursue the issues raised in Issue 9 as denials of Student's right to a free appropriate public education under United States Code title 20, section 1415, subdivision (b)(6)(A), and not procedural violations of section 1415, subdivision (k). Student's proposed resolutions seek compensatory education for Student's failure to make progress towards his individualized education program goals because Mt. Shasta allegedly removed Student from his general education classroom for at least 14 days from September 2023 to April 2024 for disciplinary reasons, without input from Student's IEP team. Student's proposed resolutions do not include a determination that Student's conduct was a manifestation of his disability, or the result of Mt. Shasta's failure to implement his IEP.

Student has demonstrated that no expedited issues are raised in the complaint, so that an expedited hearing is no longer required. Therefore, the mandatory provisions of section 1415(k)(4)(B) for an expedited hearing do not apply. (*Molina, supra,* 157 F.Supp.3d 1064, 1068-1071.) Accordingly, the expedited hearing dates will be vacated.

At the non-expedited hearing, Student may only present his issues and facts related to manifestation determinations as a denial of a free appropriate public education, and will be precluded from arguing any violations of the disciplinary provisions of the law that would require Mt. Shasta to hold a manifestation determination review meeting, or to overturn a manifestation determination, including those contained in title 20 United States Code section 1415(k)(3)(A), 34 Code of Federal Regulations part 300.532(a), and corresponding California law.

ORDER

1. Student's motion to unexpedite Issue 9 of this matter is granted.
2. The expedited hearing dates of January 22 and 23, 2025 are vacated.
3. The prehearing conference and hearing of the unexpedited matter shall proceed as scheduled.
4. In the unexpedited matter, Student will be precluded from arguing any violations of the disciplinary provisions of the law that would require Mt. Shasta to hold a manifestation determination review meeting, or to overturn a manifestation determination, including those contained in title 20 United States Code section 1415(k)(3)(A), 34 Code of Federal

Regulations part 300.532(a), and corresponding California law.

IT IS SO ORDERED.



Robert G. Martin

Administrative Law Judge

Office of Administrative Hearings