BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. PLEASANT VALLEY SCHOOL DISTRICT - CAMARILLO.	OAH Case No. 2017030694 ORDER DENYING MOTION TO UNEXPEDITE HEARING

On March 14, 2017, Student filed a request for an expedited hearing (complaint) with the Office of Administrative Hearings naming Pleasant Valley School District – Camarillo. The complaint contained some issues that were expedited, i.e., related to a disciplinary action against Student in February 2017, and other issues that were unexpedited, i.e., allegations that Student was denied a free appropriate public education since at least January 2016. OAH issued a scheduling order containing dates for mediation, prehearing conference, and hearing for the expedited portion of the case, and later dates for mediation, prehearing conference and hearing for the unexpedited portion of the case.

On March 20, 2017, Pleasant Valley filed a motion to unexpedite the case and vacate the expedited dates on the grounds that at a manifestation determination individualized education program team meeting held on February 28, 2017, the team found that Student's behavior that led to disciplinary action was a manifestation of Student's disability.[1] Further, Pleasant Valley alleges that Mother consented to a change of placement for Student to home/hospital instruction, pending placement at a nonpublic school, at the February 28, 2017 meeting which also served as Student's annual IEP team meeting review. On March 23, 2017, Student filed an opposition to Pleasant Valley's motion to unexpedite the case.

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.

[1] Student's IEP's state that he has a primary disability of emotional disturbance, and a secondary disability of specific learning disability.

§ 1415(k)(3)(A); 34 C.F.R. § 300.532(a) (2006).) 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

Mother resides within the boundaries of Pleasant Valley, and Student was enrolled in the district during the 2015-2016 and 2016-2017 school years. Father lives in Los Angeles County. There is no dispute that Parents are co-holders of Student's educational rights but do not live together.

Student was suspended from Pleasant Valley on February 21, 2017, due to an incident where he allegedly pushed a teacher. The parties attended a meeting on February 28, 2017, which is referred to as a manifestation determination review meeting by both parties, but also characterized as an annual IEP team meeting by Pleasant Valley. Father disagrees that the meeting was also an annual IEP team meeting. Mother and Father both attended this meeting.

There is no dispute that a document from that IEP team meeting contains a finding that the IEP team found that the incident of February 21, 2017, was a manifestation of Student's disability. However, in his complaint and opposition to Pleasant Valley's motion to unexpedite, Father disputes the reasoning behind the finding that the incident of February 21, 2017, was a manifestation of Student's disability. He also objects to the change of placement that Mother consented to at that meeting: home/hospital instruction pending placement at a nonpublic school.

Pleasant Valley argues that no portion of this matter should be expedited because the IEP team determined that the incident of February 21, 2017, was a manifestation of Student's disability. Further, because the meeting of February 28, 2017, also constituted an annual review, and Mother consented to the change of placement as part of that annual IEP, the change of placement was not the result of disciplinary action or the manifestation determination review meeting. Father disagrees with the characterization of the meeting as an annual IEP team meeting, and expresses his belief that the change of placement was part of the disciplinary process. He also believes the manifestation determination review meeting and determination was procedurally flawed.

There is a disputed issue of fact as to whether the manifestation determination review was procedurally correct, and whether the change of placement agreed to by Mother was the result of her signing consent to an annual IEP at the meeting of February 28, 2017, or an agreement resulting from the manifestation determination review process. Without further evidence, including testimony from Parents and Pleasant Valley personnel, this determination cannot be made. Because there is a possibility that the manifestation determination was procedurally flawed, and the change of placement was the result of the disciplinary action initiated by Pleasant Valley following the incident of February 21, 2017, it is appropriate for this issue to be expedited. Accordingly, the motion to unexpedite this matter must be denied, and all dates remain as currently scheduled, both expedited and unexpedited dates.

The hearing shall proceed as an expedited matter to determine whether the manifestation determination meeting of February 28, 2017, was properly convened, whether the manifestation determination was procedurally correct, and whether the change of placement agreed to by Mother at that meeting was part of the manifestation determination review process. If it is found that the change of placement was agreed to as part of the manifestation determination, Father's challenge to that placement shall be part of the expedited proceedings. All other issues shall remain unexpedited.

ORDER

1. Pleasant Valley's motion to unexpedite is denied.

2. This matter shall proceed on the expedited issues related to the manifestation determination review process. The prehearing conference set for 1:00 p.m. on April 3, 2017, and the due process hearing set to begin on April 5, 2017, at 9:30 a.m. are confirmed.

IT IS SO ORDERED.

DATE: March 27, 2017

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Rebecca Freie
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REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings