BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. HAYWARD UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017120638 ORDER GRANTING MOTION TO DISMISS ISSUE 2

On December 14, 2017, Student filed with the Office of Administrative Hearings a Request for an Expedited Due Process Hearing, naming Hayward Unified School District. Based on the issues raised by Student, OAH scheduled this matter for both expedited and nonexpedited hearing dates.

At the expedited prehearing conference on January 12, 2018, Hayward verbally moved to dismiss Student's Issue 2. Hayward's motion to dismiss was denied without prejudice subject to Hayward filing its motion in writing by January 17, 2018. Student was allowed leave to file a written response by January 18, 2018. The parties timely filed their pleadings.

Hayward requests that OAH dismiss Student's Issue 2 because it concerns a manifestation determination pursuant to Section 504 of the Rehabilitation Act and, therefore, is beyond OAH's jurisdiction. Hayward also asserts that Student's Issue 2 must be dismissed because it is factually inconsistent with Issue 1. Hayward's motion to dismiss is supported by the sworn declaration of its counsel and an attached copy of the November 27, 2017 Section 504 manifestation determination review findings and team meeting notes.

Student opposes Hayward's motion to dismiss. Student contends that she was entitled to a manifestation determination review within 10 days of her removal from school; that such a review was held and thus is subject to review by OAH; and that if Student proves that Hayward had a basis of knowledge that she may be a student with a disability at the time of her suspension, then OAH can also determine whether her disciplinary conduct was a manifestation of her disability.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education", and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.) OAH does not have jurisdiction to entertain claims based on Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.).

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).) 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) .)

There is no right to file for a special education due process hearing absent an existing dispute between the parties. A claim is not ripe for resolution "if it rests upon 'contingent future events that may not occur as anticipated, or indeed may not occur at all.'" (*Scott v. Pasadena Unified School Dist.* (9th Cir. 2002) 306 F.3d 646, 662 [citations omitted].) The basic rationale of the ripeness doctrine is "to prevent courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements." (*Abbott Laboratories v. Gardner* (1967) 387 U.S. 136, 148 [87 S.Ct. 1507].)

DISCUSSION

Student's complaint identifies two expedited issues for hearing. Issue 1 alleges that Student was entitled to procedural safeguards under the Individuals with Disabilities Education Act associated with disciplinary matters because Hayward had a basis of knowledge that she was a student with a disability prior to a disciplinary incident on November 8, 2017. This issue is not subject to Hayward's motion to dismiss. In Issue 2, Student alleges that her conduct was a manifestation of her disability. In her expedited

prehearing conference statement, Student framed Issue 2 as whether Hayward improperly determined that Student's conduct was not a manifestation of her disability.

Student does not dispute that the manifestation determination review team meeting convened by Hayward with regards to Student's violation of school conduct was held pursuant to Section 504. Student provides no legal authority in support of her contention that this Section 504 manifestation determination review is subject to review by OAH. OAH has no jurisdiction over Section 504 matters. To the extent Student seeks to challenge the November 27, 2017 manifestation determination review, Hayward's motion to dismiss is granted.

Student has the right to an expedited hearing to appeal a placement decision or to appeal the findings of a manifestation determination review convened pursuant to Title 20 of the United States Code, section 1415(k). Pursuant to Issue 1, Student is appealing Hayward's act of removing her from her school and asserts she was denied her procedural safeguards with regards to the manifestation determination process. If Student were to establish at the expedited hearing that Hayward had a basis of knowledge that Student was a student with a disability at the time of her disciplinary conduct, then Hayward may be ordered to conduct a manifestation determination review pursuant to Section 1415(k). Student may additionally be afforded the remedy of an Order returning her to school, among other possible remedies. Of course no determination is made herein, as such potential remedies are subject to proof at a full evidentiary hearing.

However, Student's Issue 2 is not ripe for adjudication. In addition to allowing Student to appeal a placement decision through an expedited hearing before OAH, Section 1415(k) also allows Student to appeal a manifestation determination review. Had Hayward conducted a manifestation determination pursuant to the IDEA, then Student would be able to appeal the findings and assert that her conduct was a manifestation of her disability. Student cannot appeal, in the context of an expedited hearing, that which has not occurred. OAH's jurisdiction in this expedited matter extends to Student's appeal of her disciplinary change in placement. As Hayward has not afforded Student a manifestation determination review under the IDEA, whether or not her conduct was a manifestation of her disability is not ripe for review.

An ALJ may raise an issue of jurisdiction sua sponte at any time during the course of the proceedings. The undersigned has determined that Student's Issue 2 is not ripe for adjudication and is hereby dismissed. The mandatory provisions of title 20, section 1415, subdivision (k)(4)(B) for an expedited hearing apply to Issue 1. **As such, this matter will proceed to an expedited hearing as to Issue 1 only. The expedited hearing will commence as scheduled on January 24, 2018. The parties are hereby advised that should this matter not conclude on January 24, 2018, the expedited hearing will resume at 12:30 p.m., on January 25, 2018.**

ORDER

1. Hayward's Motion to Dismiss Issue 2 is granted.

2. This matter shall proceed to an expedited hearing as to Issue 1 only.

3. The expedited hearing will commence on January 24, 2018, at 9:30 a.m., and continue, if additional hearing time is required, on January 25, 2018, at 12:30 p.m., and day to day, Monday through Thursday, as needed at the discretion of the ALJ.

IT IS SO ORDERED.

DATE: January 22, 2018

DocuSigned by:
Theresa Ravandi
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THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings