BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LOS ANGELES UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017091066 ORDER GRANTING MOTION TO UNEXPEDITE HEARING

On September 26, 2017, Student filed a Due Process Hearing Request (complaint) against Los Angeles Unified School District. On September 29, 2017, based on an issue asserted in the complaint, the Office of Administrative Hearings issued a Scheduling Order Setting Dual Hearing Dates Including Expedited Hearing, Prehearing Conference and Mediation. The Scheduling Order set this matter for: expedited mediation on October 10, 2017; non-expedited mediation on October 31, 2017; expedited prehearing conference on October 13, 2017; non-expedited prehearing conference on November 13, 2017; expedited due process hearing on October 17, 18 and 19, 2017; and non-expedited due process hearing on November 21, 2017.

On October 5, 2017, Student filed a motion to unexpedite this matter, vacate the expedited dates and consolidate all issues alleged to be heard at the unexpedited hearing. On October 10, 2017, District filed a non-opposition to Student's motion.

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).[1]) 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 if no

[1] All subsequent references to the Code of Federal Regulations are to the 2006 version.

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

Student is a 10 year old boy with a medical diagnosis of Prader-Willi Syndrome, a complex genetic disorder that, according to Student's complaint, typically causes uncontrollable appetite, lowered cognitive functioning, learning issues, behavioral problems and other social and motor deficits. In addition, Student has been diagnosed with a variety of other disorders. Student's initial placement for the 2016-2017 school year was a special day class at Hope Street Elementary School.

In spring, 2017, Student presented multiple behavior problems both in class and on the school bus. In April, 2017, two incident reports were filed regarding Student's negative behaviors on the bus because Student was hitting, kicking and refusing to wear his safety vest. On May 1, 2017, the IEP team members met and agreed that the special day class at Hope Street continued to be the appropriate placement for Student. Guardian consented to the continued placement.

Due to Student's increased aggression and non-compliant behaviors, District changed Student's placement to Carlson Home Hospital instruction, for five hours a week, with no related services, effective as of May 23, 2017. District claimed Student's behavior presented a danger to Student and/or others. Student's change of placement to home hospital instruction continued through June 9, 2017. During the 2017 extended school year Student attended a special day class at Hughes Elementary, at which he performed well. However, Student's placement of Carlson Home Hospital instruction again resumed at the beginning of the 2017-2018 school year and continues to date. Guardian did not agree to Student's continued Home Hospital placement. District did not hold a manifestation determination hearing, or an IEP meeting, before changing Student's placement from the special day class at Hope Street to Carlson Home Hospital instruction.

Issue number one in Student's complaint alleges that District unilaterally, improperly changed Student's placement from a special day class at Hope Street to Carlson Home Hospital without conducting a manifestation determination hearing or an IEP meeting.[2] The complaint states (at paragraph 46): "On its face, it appears that LAUSD removed [Student] from school for disciplinary reasons." The complaint further alleges (at paragraph 48) that

[2] The other issues alleged in the compliant (numbered 2, 3, 4, 5 and 6) do not raise any matters that would be subject to an expedited proceeding.

District asked Guardian to sign a referral for home hospital "… without any discussion of whether [Student's] aggressive behavior was caused by, or had a substantial relationship to, his disability or if the conduct in question was a direct result of District's failure to implement [Student's] IEP in violation of 34 CFR 300.530 (e)." The complaint further alleges (at paragraph 49) that Student was removed from his placement at Hope Street for 19 school days at the end of the 2016-2017 school year, and for more than 19 school days in the 2017-2018 school year. The complaint also contends (at paragraph 49) that District was obligated to undertake a manifestation determination pursuant to 34 CFR 300.530(e) within ten school days of its decision to change Student's placement, and that it failed to do so.

Here, OAH scheduled an expedited hearing in an abundance of caution, based upon Student's allegations regarding District's failure to hold a manifestation determination hearing before it changed Student's placement to Home Hospital instruction for a period in excess of ten school days. It was unclear from the pleading if Student was seeking to appeal District's failure to hold a manifestation determination meeting prior to changing Student's placement, which Student alleges was due to disciplinary reasons.

However, Student is not seeking any expedited relief afforded by an appeal under 20 U.S.C. § 1415(k). Student does not seek an order either returning him to the placement in the special day class at Hope Street, or a change to an interim alternative placement for not more than 45 school days. Since Student does not seek remedies available through an expedited proceeding, there is no reason to hold an expedited hearing.

Therefore, Student's motion to unexpedite this matter, and consolidate all issues alleged in the complaint to be heard at the unexpedited hearing, is granted. Student may only present the facts pertaining to District's change of his placement without a manifestation determination hearing as a denial of FAPE, and will be precluded from evidence of District's procedural violations of the disciplinary provisions of the law that Student would otherwise have under 20 U.S.C. section 1415(k)(3)(A); 34 C.F.R. section 300.532(a); and corresponding California law. This order unexpediting this proceeding does not in any way limit Student's opportunity to reference, and seek to admit, evidence of or related to Student's removal from his placement, or alleged procedural deficiencies in connection with District's change of Student's placement for purposes of establishing a denial of FAPE and seeking compensatory and equitable relief based on those actions and events.

ORDER

1. The motion to unexpedite the hearing dates is granted.

2. The scheduled expedited prehearing conference on October 13, 2017, and the expedited due process hearing on October 17, 18 and 19, 2017, are vacated.

3. The following non-expedited dates currently scheduled in this matter are confirmed:

a. non-expedited mediation on October 31, 2017;
b. non-expedited prehearing conference on November 13, 2017; and
c. non-expedited due process hearing on November 21, 2017.

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IT IS SO ORDERED.

DocuSigned by:
Christine Arden
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DATE: October 11, 2017

CHRISTINE ARDEN
Administrative Law Judge
Office of Administrative Hearings