BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

MT. DIABLO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021080274

ORDER GRANTING MOTION TO UNEXPEDITE HEARING

AUGUST 17, 2021

On August 6, 2021, Parent on Behalf of Student filed a due process hearing request, called complaint, with the Office of Administrative Hearings, called OAH, naming Mt. Diablo Unified School District. On August 10, 2021, based on issues asserted in the complaint, OAH issued a Scheduling Order setting hearing dates for an expedited hearing and for a non-expedited hearing. The scheduling order set this matter for expedited mediation on August 20, 2021, expedited prehearing conference on August 23, 2021, and expedited hearing for August 31, 2021, through September 2, 2021.

On August 11, 2021, Mt. Diablo filed a motion to unexpedite this matter and vacate the expedited hearing dates. On August 13, 2021, Student filed a response opposing the motion. On August 16, 2021, Mt. Diablo filed a reply.

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

Student's complaint alleges that he was blocked, apparently muted and placed off camera, for 10 school days during distance learning in March and April 2021 because he acted inappropriately in front of the camera. Student also alleges that Mt. Diablo failed to offer adequate distance learning supports from March 2021, through the end of the 2020-2021 school year. Student alleges two expedited claims on these facts. First, at Issue A1, Student alleges that his yelling, screaming and distracting behavior was related to his disabilities of autism and attention deficit hyperactivity disorder, and that

blocking him constituted a change of placement for disciplinary reasons. In addition, all students in his class were placed on independent study with one hour of instruction from March 2021, through June 2021, but Student alleges that he required in-home supports for his behaviors and could not access independent study, which he contends was a change of placement. Second, at Issue B1a and B1b, Student alleges that Mt. Diablo should have held a manifestation determination meeting before blocking him from distance learning or placing him on independent study. As remedies, Student requests assessments, one-to-one instruction, compensatory education and transportation.

Mt. Diablo contends that none of the actions alleged constitutes a change of placement for disciplinary reasons. Moreover, Mt. Diablo points out that Student's complaint was filed after the end of the 2020-2021 school year, and there is no current or pending disciplinary action against Student, so no grounds exist for an expedited hearing.

Student responds that he anticipates similar problems during the 2021-2022 school year, because he cannot wear a mask to attend in-person classes, which he contends is an extension of the suspension of special education and related services called for in his complaint. Because Student allegedly cannot access distance learning without more supports, Student requests an expedited hearing.

Mt. Diablo replies that Student alleged March 2021 through June 2021, as finite periods of time at issue, and did not allege a current or pending disciplinary action to warrant an expedited hearing.

Mt. Diablo demonstrated that no expedited issues were alleged in the complaint or that circumstances have changed, so that an expedited hearing is no longer required.

District-wide suspension of in-person special education and related services, with distance learning and independent study during a pandemic, does not constitute a change of placement for Student for disciplinary reasons. Student's alleged inability to access distance learning or independent study is an issue of whether Mt. Diablo offered Student a free appropriate public education, called a FAPE, or appropriately implemented the services in Student's individualized education program. Student alleges a failure of Mt. Diablo to provide Student with adequate services during distance learning in the 2020-2021 school year at Issue F, and Student's FAPE issues will be heard and decided in the non-expedited hearing.

While Student alleges that Mt. Diablo should have held a manifestation determination meeting, Student does not request as a proposed remedy that OAH order Mt. Diablo to hold such a meeting, which would trigger the expedited hearing process for disciplinary changes in placement under Section 1415(k)(3)(A) & (B). Student seeks assessments, transportation, and compensatory special education and services, which are remedies available in the non-expedited process at Section 1415(b)(6). Student does not allege facts that constitute an appeal pursuant to Section 1415(k)(3), and thus that 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.

ORDER

1. Mt. Diablo's motion to un-expedite this matter is granted.
2. The expedited mediation and hearing dates for this matter are vacated.
3. The un-expedited matter shall proceed as set in OAH's August 10, 2021 Scheduling Order, unless otherwise ordered.

Alexa Hohensee

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Administrative Law Judge

Office of Administrative Hearings