BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. BELLFLOWER UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017120908 ORDER GRANTING MOTION TO UNEXPEDITE HEARING AND DISMISSING EXPEDITED CLAIMS

On December 22, 2017, Student filed a Due Process Hearing Request (complaint) against Bellflower Unified School District. On December 26, 2018, based on issues asserted in the complaint, the Office of Administrative Hearings issued a Scheduling Order and Notice of Expedited and Non-Expedited Due Process Hearing and Mediation (Scheduling Order). The Scheduling Order set this matter for an expedited hearing on January 31, February 1 and 2, 2018, and for a non-expedited hearing on February 15, 2018. On January 18, 2018, the parties jointly filed a motion to unexpedite this matter and vacate the expedited dates.

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 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.)

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

DISCUSSION

Student's complaint alleges in relevant part that on December 19, 2016, District held a manifestation determination review in which the manifestation review team concluded Student's behaviors at issue were not a manifestation of his disability. Consequently, District informed Parent she had two options: a change of his placement to a Behavior Emotional Social Training program located at Bellflower Middle School, or expulsion. Student began attending the BEST program in January 2017.

Student's complaint identifies eight "legal issues." Issue One alleges District denied Student a free appropriate public education by failing to offer or provide Student with an appropriate educational placement. Issue Three alleges District unlawfully changed Student's placement as a result of the December 2016 manifestation determination findings, thereby denying Student a FAPE. Student's other issues allege procedural and substantive violations of the Individuals with Disabilities Education Act resulting in a denial of FAPE. Student's proposed resolutions seek compensatory remedies in addition to findings that District violated the IDEA. None of Student's proposed resolutions ask for an order that would change the outcome of the December 16, 2016 manifestation review or seek to return Student to his placement before that date.

The parties' motion asserts that Student is not seeking the limited remedies associated with an appeal of the manifestation determination review under title 20 United States Code section 1415(k)(3). Those remedies include an order reversing the manifestation review team's determination, ordering District to return Student to his placement prior to the manifestation review, and or ordering assessments. Instead, the parties assert that Student is seeking only compensatory remedies for all issues raised in the complaint as a result of a denial of FAPE, which are separate and distinct from the remedies arising under section 1415(k).

Student has demonstrated that, although Student challenges District's manifestation review as a denial of FAPE, Student's complaint alleges no expedited issues or related proposed remedies, and therefore an expedited hearing is not required. Although the complaint includes facts concerning the manifestation determination, Student did not intend to appeal the manifestation determination in this proceeding. As a result, the mandatory provisions of title 20 United States Code section 1415(k)(4)(B) for an expedited hearing do not apply. Accordingly, the expedited hearing dates will be vacated.

Student may present his Issues One and Three, and the facts pertaining to those issues, as well as all other issues in the complaint, only as a denial of FAPE. Student will be precluded from arguing any violations of the disciplinary provisions of the law that would entitle Student to an order that requires District to overturn a manifestation determination, or any of those remedies contained in 20 U.S.C. section 1415(k)(3)(A); 34 C.F.R. section 300.532(a); and corresponding California law.

ORDER

1. The motion to unexpedite this matter is granted. Issues One and Three, along with all other claims in the complaint, shall be limited to claims arising under title 20 United States Code section 1415(b)(6)(A). Any claims, and corresponding remedies, by Student arising under title 20 United States Code section 1415(k)(3)(A), title 34 Code of Federal Regulations section 300.532(a) or corresponding California law are dismissed.

2. The following expedited dates are vacated: expedited prehearing conference on January 22, 2018 at 10:00 a.m., and expedited due process hearing on January 31, and February 2, 2018.

3. The unexpedited matter shall proceed on the dates set forth in the scheduling order unless the parties timely file a request for mediation and continuance of the unexpedited hearing.

IT IS SO ORDERED.

DATE: January 18, 2018

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Adrienne L. Krikorian
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ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings