BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. OAKLAND UNIFIED SCHOOL DISTRICT AND ASPIRE COLLEGE ACADEMY.	OAH Case No. 2017050146 ORDER GRANTING MOTION TO UNEXPEDITE HEARING

On April 28, 2017, Student filed a Due Process Hearing Request (complaint) against Oakland Unified School District and Aspire College Academy. On May 3, 2017, based on Issue 11 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 expedited mediation on May 11, 2017; non-expedited mediation on June 1, 2017; expedited prehearing conference on May 19, 2017, at 1:00 p.m.; non-expedited PHC on June 16, 2017, at 10:00 a.m.; expedited due process hearing on May 23, 24, and 25, 2017; and non-expedited due process hearing to begin on June 22, 2017.

On May 10, 2017, Aspire filed a motion to unexpedite this matter and vacate the expedited dates. On the same date Oakland sent a letter to OAH asking that it not be included in the expedited proceedings as the issue only pertained to Aspire. On May 17, 2017, Student filed a non-opposition to Aspire's motion to unexpedite the case, and also asked that the case be unexpedited.

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).) 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)(2006) .) 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 did not ask for an expedited hearing, but her Issue 11 alleges that Aspire removed Student from class during the 2014-2015 school year,[1] for more than 10 days for disciplinary reasons, but did not hold a manifestation determination individualized education program team meeting, and that the removals denied her a free appropriate public education. One of Student's proposed resolutions is that Aspire remove any incident reports from her file. However, there is no request that Aspire be ordered to hold a manifestation determination IEP team meeting.

Aspire asks that the hearing be unexpedited, in part because Student did not ask for an expedited hearing, and also the alleged disciplinary incidents occurred during the 2014-2015 school year. Further, Student is now enrolled in Oakland and currently is not an Aspire student. In her non-opposition, Student also asks that the hearing be unexpedited and also points out that she is not attending Aspire, and has not been enrolled there since the beginning of the 2016-2017 school year when she enrolled in Oakland.

Although the complaint includes facts concerning removals that exceeded a total of 10 days during the 2014-2015 school year without a manifestation determination, Student no longer attends Aspire and the expedited issue is moot. Student does not allege facts that constitute an appeal pursuant to Section 1415(k)(3), and thus the mandatory provisions of Section 1415(k)(4)(B) for an expedited hearing do not apply. Student may only present her Issue 11, and the facts pertaining to it, as a denial of FAPE, and will be precluded from arguing any violations of the disciplinary provisions of the law that would support an order that requires Aspire to hold a manifestation determination meeting. Accordingly, the expedited hearing dates will be vacated.

ORDER

[1] Student's complaint contains a request to extend the two-year statute of limitations for filing a complaint pursuant to the Individuals with Disabilities Education Act. Nothing in this order should be construed as agreement with Student that the two-year period for filing should be extended. No such determination is made at this time.

1. The motion to unexpedite this matter is granted. Issue 11 is no longer expedited, and only the alleged denial of a FAPE based on disciplinary removals shall be litigated.

2. The following expedited dates are vacated: PHC on May 19, 2017, and hearing on May 23, 24, and 25, 2017. .

3. The unexpedited matter shall proceed on the following dates: Mediation June 1, 2017, at 9:30 a.m.; PHC June 16, 2017, at 10:00 a.m., and hearing June 22, 2017, at 9:30 a.m.

IT IS SO ORDERED.

DATE: May 18, 2017

DocuSigned by:
Rebecca Freie
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REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings