BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LOS ANGELES UNIFIED SCHOOL DISTRICT, INGENIUM CHARTER MIDDLE SCHOOL AND INGENIUM SCHOOLS.	OAH Case No. 2019051108 ORDER GRANTING MOTION TO UNEXPEDITE HEARING, VACATING EXPEDITED MEDIATION AND HEARING DATES, AND DEEMING MOTION TO RESCHEDULE EXPEDITED MEDIATION MOOT

On May 24, 2019, Student filed a Due Process Hearing Request (complaint) naming Los Angeles Unified School District, Ingenium Charter Middle School and Ingenium Schools. On May 28, 2019, 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 expedited mediation on June 6, 2019, expedited prehearing conference on June 10, 2019, expedited hearing on June 19 and 20, 2019, non-expedited prehearing conference on July 8, 2019, and non-expedited hearing on July 16, 17 and 18, 2019.

On May 29, 2019, Student filed a motion to unexpedite this matter or, alternatively, if the motion was not granted, to continue the dates set for prehearing conference and hearing on the expedited issues. On June 3, 2019, Student filed a motion to reschedule the expedited mediation. OAH did not receive a response to either motion by the respondents. This Order addresses both motions.

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

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

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 raises numerous issues. Student's "Issue D" asserts that Los Angeles Unified failed to hold a manifestation determination review team meeting during the 2016-2017 school year after more than ten days of suspension from school. This issue requires an expedited hearing unless Student waives any remedies that would arise under title 20 United States Code section 1415(k).

Student asserts in the complaint that the suspensions, including multiple removals from class, constituted a change of placement that resulted in a denial of a free appropriate public education. Student asserts in his Motion to unexpedite that he is not seeking any remedies arising under section 1415(k), including return to his placement before the suspensions, or an order compelling Los Angeles Unified to hold a manifestation review team meeting. His complaint does not ask for an expedited hearing. Instead, he claims that the suspensions resulted in a denial of FAPE, including an appropriate placement and related services and supports to assist him in accessing his education, for which he is entitled to compensatory remedies.

Student has demonstrated that he is not seeking any remedies that would arise from a claim arising under section 1415(k) so that an expedited hearing is no longer required. Although the complaint includes facts concerning the failure to hold a manifestation determination review meeting, Student is not appealing the failure to do so except as it relates to a denial of FAPE. As such, Student's motion to unexpedite "Issue D" in his complaint relating to the manifestation determination review team meeting will be unexpedited.

Student may only present "Issue D", and the facts pertaining to it, as a denial of FAPE. Student will be precluded seeking remedies arising from an appeal asserting any violations of the disciplinary provisions of the law that Student would have in an order that requires District to hold a manifestation determination meeting, including those contained in 20 U.S.C. section 1415(k)(3)(A); title 34 Code of Federal Regulations section 300.532(a); and corresponding California law.

Because Issue D is unexpedited, the expedited mediation is no longer necessary. The motion to reschedule the expedited mediation is moot. The parties may file a joint request for mediation of all issues in the complaint with mutually agreeable dates.

ORDER

1. The motion to unexpedite Student's "Issue D" is granted. The motion to reschedule the expedited mediation is moot.

2. Student is precluded from raising any claims at the due process hearing arising under title 20 United States Code section 1415(k), title 34 Code of Federal Regulations section 300.532(a) and corresponding California law, except as those claims relate to and seek remedies as a result of a denial of FAPE under title 20 United States Code section 1415(b)(6) and corresponding California law.

3. The following expedited dates are vacated: Expedited mediation on June 6, 2019, expedited prehearing conference on June 10, 2019, and expedited hearing on June 19 and 20, 2019.

4. Dates and times for the prehearing conference on July 8, 2019, and due process hearing on July 16, 17, and 18, 2019, are confirmed unless otherwise ordered.

DATE: June 4, 2019

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