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. 2018100080 ORDER GRANTING MOTION TO UNEXPEDITE HEARING

On September 28, 2018, Student filed a Due Process Hearing Request (complaint) against Los Angeles Unified School District. On October 2, 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 the expedited PHC and hearing for October 15 and October 23-25, 2018 respectively. The non-expedited hearing was set for November 21, 2018. On October 10, 2018, Student filed a motion to unexpedited this matter and vacate the expedited dates. LAUSD filed a notice of non-opposition on the same date.

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 identifies six issues. Issue B alleges LAUSD held a manifestation determination on October 10, 2016, without first assessing Student's behavior. Student asserts LAUSD incorrectly determined that his behavior was not a manifestation of his disability, and as a result changed his placement to inappropriate settings pending expulsion proceedings and during suspended enforcement of expulsion. Student claims LAUSD's failure to assess him in all areas of suspected need before the manifestation determination denied him a free appropriate public education. Student includes numerous proposed resolutions. None of those proposed resolutions request reversal of the manifestation determination team's decision, a return to his placement at the time of the manifestation determination, or any other remedy available under title 20 United States Code section 1415(k).

Student's counsel argues that Student is not appealing the manifestation determination under section 1415(k), and that Student is not seeking any remedies provided for under that section related to an appeal of the manifestation determination. Although Student has not expressly withdrawn any claims related to an appeal under 1415(d), the complaint identifies each of the six issues as a denial of FAPE and not as an appeal. Accordingly, this matter will be unexpedited and the expedited PHC and expedited due process hearing dates will be vacated.

Student may only present his Issue B, 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 Student would have in an order that requires to overturn a manifestation determination, including those 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.

2. The following expedited dates are vacated: PHC on October 15, 2018, and due process hearing on October 23-25, 2018.

3. The unexpedited matter shall proceed on the following dates: PHC on November 9, 2018, due process hearing on November 21, 2018.

DATE: October 11, 2018

DocuSigned by:
Adrienne L. Krikorian
3475616B5EDF4C6...

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings