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 NUMBER 2021030271

ORDER DENYING MOTION TO UNEXPEDITE HEARING

MARCH 17, 2021

On March 5, 2021, Student filed a Due Process Hearing Request, known as a complaint, against Los Angeles Unified School District. On March 8, 2021, based on issues asserted in the complaint, the Office of Administrative Hearings, referred to as OAH, 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 March 18, 2021, expedited prehearing conference on March 26, 2021, at 10:00 a.m., and expedited hearing for March 30, and April 1, 2021. Student subsequently cancelled the expedited mediation date.

On March 11, 2021, Los Angeles filed a motion to unexpedite this matter and vacate the expedited dates. Student has not filed a response.

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).) 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

It is Los Angeles' position that there is no legal basis for an expedited hearing as Student has not alleged a disciplinary change in placement and is currently attending school. Los Angeles asserts Student's complaint alleges solely a denial of a free appropriate public education, or FAPE, due to a failure to convene a manifestation determination review meeting and that this does not constitute an expedited issue. Los Angeles' position is not persuasive.

Student's issue number two generally asserts a denial of FAPE during the 2019-2020 school year with several sub-issues. Sub-issues (b) and (c) allege a failure to

conduct a manifestation determination review and changing Student's placement without holding an individualized education program team meeting. Student's complaint alleges that Student was told he must stay home from school because of his impact on other students and that the school did not follow-up with Parent for more than two weeks in approximately February and March 2020. Even though Student did not request an expedited hearing or specifically alleged a disciplinary removal based on a violation of a code of school conduct, the complaint raises facts and issues subject to an expedited time frame. Student disagrees with an alleged change in placement and a denial of his procedural disciplinary protections of a manifestation determination review. These contentions constitute an appeal pursuant to Section 1415(k)(3), and thus the mandatory provisions of Section 1415(k)(4)(B) for an expedited hearing apply. (*Molina, supra*, 157 F.Supp.3d 1064, 1068-1071.) Accordingly, the motion to unexpedite the hearing dates is denied.

Nothing in this Order prevents Student from withdrawing the issues from the complaint that are subject to an expedited due process hearing, or clarifying that he seeks to present all issues and the facts pertaining to these issues, solely as denials of FAPE. Should Student proceed in this fashion, he will be precluded from arguing any violations of the disciplinary provisions of the law or seeking any remedies he would have in an order that requires Los Angeles to conduct a manifestation determination meeting, including those contained in 20 U.S.C. section 1415(k)(3)(A) and 34 C.F.R. section 300.532(a).

ORDER

1. The motion to unexpedite the hearing dates is denied.
2. The expedited hearing shall proceed as scheduled.

IT IS SO ORDERED.

Theresa Ravandi

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Administrative Law Judge

Office of Administrative Hearings