BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

SAN DIEGO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2020090010

# ORDER GRANTING MOTION TO UNEXPEDITE HEARING

SEPTEMBER 11, 2020

On September 1, 2020, Student filed a Due Process Hearing Request, known as a complaint, against San Diego Unified School District. 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 September 16, 2020, expedited prehearing conference on September 21, 2020, and expedited hearing for September 29 through October 1, 2020.

On September 10, 2020, the parties filed a joint 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), All subsequent references to the Code of Federal Regulations are to the 2006 version.) 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. (20 U.S.C. § 1415(k)(4)(B); 34 C.F.R. § 300.532(c)(2).) 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 consists of 109 pages. It appears to include approximately 20 pages directly from Student's independent educational evaluation report, extensive quotes from other documents, lengthy transcript reporting of what was said at various meetings, and a 15-page Parent Dissent. It is confusing and not well-pled. The statement of issues begins at page 97. Student essentially identifies four issues and

numerous sub-issues for hearing regarding procedural and substantive denials of a free appropriate public education, called FAPE, for the 2018-2019 through 2020-2021 school years.

Student's Issue 2 asserts a denial of FAPE for the 2019-2020 school year. Sub-issue 13 and 32 allege San Diego deny Student a FAPE by suspending him for more than 20 school days, including 6 days for "willful behavior." Sub-issue 33 references these suspensions. Sub-issue 35 alleges a denial of FAPE because San Diego changed its FAPE offers so frequently, Parent could not seriously consider them. This sub-issue specifies that at a manifestation determination review it was unclear which individualized education program or IEP was in effect. Student's Issue 2 next asserts a substantive denial of FAPE for the 2019-2020 school year. Student's substantive issue includes several disjointed, run-on sentences and phrases in a single paragraph that spans two pages and 30 lines. This portion also references the suspensions. For the 2019-2020 violations, Student seeks reimbursement for numerous services and the provision of services, an assistive technology consult, an IEP team meeting to review a vision therapy assessment and the assistive technology findings, and an amended IEP. In Issues 3 and 4 regarding the 2020 extended school year and the 2020-2021 school year, Student incorporates the prior violations raised in Issue 2 and seeks the same remedies.

While Student did not specifically request an expedited hearing, the complaint appeared to raise issues regarding a disciplinary change in placement through multiple suspensions and a challenge to the manifestation determination review. Such issues are subject to an expedited hearing. In the motion to unexpedite, Student indicates he did not intend to identify issues that would trigger an expedited hearing. Rather, Student clarifies that issues regarding San Diego's alleged acts of "illegal suspension" during the 2019-2020 school year were raised solely as a denial of FAPE for which he is seeking

compensatory services. Student further clarifies that he is not challenging the February 2020 manifestation determination review.

Student has demonstrated that no expedited issues were alleged in the complaint so that an expedited hearing is not required. Specifically, he is not raising issues regarding a disciplinary change of placement or violations of his disciplinary procedural rights under Section 1415(k). Although the complaint includes facts concerning suspensions in excess of 10 school days and a manifestation determination review meeting, Student did not intend to raise these as expedited issues but rather as a denial of FAPE. Student does not allege facts that constitute an appeal pursuant to Section 1415(k)(3), and thus that the mandatory provisions of Section 1415(k)(4)(B) for an expedited hearing do not apply. (*Molina, supra,* 157 F.Supp.3d 1064, 1068-1071.) Accordingly, the expedited hearing dates will be vacated.

Student may only present Issues 2, 3, and 4, and the facts pertaining to them, as a denial of FAPE. Student 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 San Diego to hold a manifestation determination meeting or 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. All expedited dates are vacated.

3. This matter shall proceed as an unexpedited matter on the following dates: the prehearing conference will be held on October 19, 2020, at 10:00 AM and the due process hearing will be held on October 27 through 29, 2020, beginning each day at 9:30 AM and continuing day to day at the discretion of the administrative law judge.

IT IS SO ORDERED.

DocuSigned by:
Theresa Ravandi
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Theresa Ravandi

Administrative Law Judge

Office of Administrative Hearings