BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

WHITTIER UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2024050095

ORDER GRANTING MOTION TO UNEXPEDITE HEARING

MAY 17, 2024

On May 1, 2024, Student filed a due process hearing request, called a complaint, naming Whittier Union High School District. On May 2, 2024, based on issues asserted in the complaint, the Office of Administrative Hearings, called 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 May 15, 2024, expedited prehearing conference on May 20, 2024, and expedited hearing for May 29 and 30, 2024.

On May 17, 2024, the parties jointly filed a motion to unexpedite this matter and vacate the expedited dates.

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. (*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.)

Student did not specifically request an expedited hearing, however, OAH determined two of Student's issues required an expedited due process hearing. Student's Issue 5 alleged Whittier denied Student a free appropriate public education, or FAPE, at the May 17, 2023, manifestation determination review meeting by improperly determining that the incident in question was not related to Student's disability. Student's Issue 6 alleged Whittier impeded Parents' participation in the decision-making process by unilaterally changing Student's placement following Student's January 12, 2023, suspension.

Student has demonstrated that no expedited issues were alleged in the complaint. Although Student's complaint includes facts concerning the manifestation determination, Student did not intend to raise it as an issue. 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. (*Molina, supra,* 157 F.Supp.3d 1064, 1068-1071.) Additionally, Student is not currently subjected to disciplinary action. Student is not seeking an order that he be returned to his previous placement, nor is Whittier seeking an interim alternative educational setting for Student. Student contends the issues raised in the complaint are solely related to substantive and procedural violations of FAPE. Accordingly, the expedited hearing dates will be vacated.

Student may only present facts pertaining to a denial of FAPE regarding the May 17, 2023, manifestation determination review meeting and the January 2023 change of placement. Student will be precluded from arguing any violations of the disciplinary provisions of the law that require Whittier to hold a manifestation determination meeting or to overturn a manifestation determination, including those contained in 20 U.S.C. section 1415(k); 34 C.F.R. section 300.530; and corresponding California law. Student will also be precluded from receiving any remedy for violations related to 20 U.S.C. section 1415(k); 34 C.F.R. section 300.530; and corresponding California law.

ORDER

1. The motion to unexpedite this matter is granted.
2. The following expedited dates are vacated, the expedited prehearing conference on May 20, 2024, and the expedited due process hearing on May 29 and 30, 2024.

Linda Dowd

Linda Dowd

Administrative Law Judge

Office of Administrative Hearings