BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

PASADENA UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2020060273

ORDER DENYING MOTION TO UNEXPEDITE HEARING

JUNE 16, 2020

On June 4, 2020, Student filed a Due Process Hearing Request, known as a complaint, against Pasadena Unified School District. On June 9, 2020, 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 June 18, 2020, expedited prehearing conference on June 22, 2020, and expedited hearing for June 30, July 1 and July 2, 2020. Parent cancelled the expedited mediation on July 12, 2020.

On June 15, 2020, Student filed a Request for Non-expedited Mediation and Hearing, requesting to join the expedited hearing dates with the non-expedited hearing dates based on the contention that an expedited hearing is not required. This is considered a motion to unexpedite. On June 15, 2020, Pasadena filed a non-opposition.

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. (*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

Issue Six Student's complaint alleges that Pasadena failed to provide reasonable notice of Student's manifestation determination meeting. This issue alleges a violation of the due process procedures regarding a manifestation determination and, accordingly, an expedited hearing is mandated. Student did not request to withdraw this expedited issue or elect to challenge the procedural violation as a denial of FAPE under Title 20, section 1415, subdivision (b)(6)(A) and not subdivision (k). Instead, Student seeks to unexpedite the issue on the basis that the issue does not require an

expedited hearing because Student is currently in a placement as the result of a safety transfer and Parents are not seeking to change the placement at this time.

Student requests to hear all matters at the same time in one non-expedited hearing to promote efficient resolution of all issues and prevent inconsistent resolution.

As issue Six states an expedited claim, which was neither withdrawn or brought under Title 20, section 1415, subdivision (b)(6)(A), it requires an expedited hearing.

Student's argument that an expedited hearing on the issue of whether Pasadena failed to provide reasonable notice of Student's manifestation determination meeting does not require an expedited hearing because Parents are not challenging the change of Student's placement at this time is unpersuasive.

Student seeks to vacate the expedited hearing dates even though an issue raised in the complaint is subject to an expedited time frame. Once the issue is raised, the expedited hearing time frame applies. Accordingly, the motion to unexpedite the hearing dates must be denied.

ORDER

1. The motion to unexpedite the hearing dates is denied.

2. The expedited hearing shall proceed on Issues Six as scheduled. The expedited prehearing conference will be held on June 22, 2020, at 1:00 PM; and the expedited due process hearing shall be held on June 30, July 1 and July 2, 2020.

IT IS SO ORDERED.

DocuSigned by:
Rita Defilippis
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Rita Defilippis
Administrative Law Judge
Office of Administrative Hearings