BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023120395

ORDER DENYING MOTION TO UNEXPEDITE HEARING

JANUARY 2, 2024

On December 12, 2023, Parents on behalf of Student filed a Due Process Hearing Request, known as a complaint, against Santa Monica-Malibu Unified School District. On December 12, 2023, 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 January 10, 2024, expedited prehearing conference on January 12, 2024, and expedited hearing for January 23, through January 25, 2024.

On December 29, 2023, Santa Monica-Malibu filed a motion to unexpedite this matter and vacate the expedited dates. On December 29, 2023, Student filed a response claiming that he intended to allege expedited issues related to the multiple

disagreements related to the manifestation determination review meeting of May 19, 2023 and changes in placement due to violations of disciplinary codes of conduct. Student asserts the disagreements are an appeal of Santa Monica-Malibu's decisions within the meaning of title 34 of the Code of Federal Regulations, part 300.532.(a). Student asserts his right to a determination on his appeal and right to an expedited due process hearing.

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

In Student's complaint, issues 19, 20, and 21 allege denials of FAPE and allegations that Santa Monica-Malibu significantly impeded Parents' opportunity to participate in the decision-making process. Student's issues 19, 20, and 21 relate to the May 19, 2023, manifestation determination review meeting, an alleged violation of the code of conduct that resulted in a suspension, and a changed placement. Although Student did not assert that he was raising these three allegations pursuant to title 20 United States Code section 1415(k), issues 19, 20, and 21, as pled, give rise to expedited and non-expedited claims. Student's opposition states that his disagreements with the manifestation determination review meeting and change of placement due to violations of the disciplinary code of conduct are an appeal, and he asserts his right to an expedited hearing on these issues. Based on the issues as pled, they are deemed expedited.

Santa Monica-Malibu contends that Student's complaint does not allege facts that constitute an appeal pursuant to section 1415(k)(3). Santa Monica-Malibu also asserts that Student is no longer facing a disciplinary action and the placement change was not based on the outcome of the manifestation determination to support its claim that the matter should be unexpedited. It also claims that Student's proposed resolutions do not seek remedies related to disciplinary provision, so OAH should find the claims were made pursuant to title 20, section 1415(b)(6), rather than 1415(k). Since Student's claims may raise expedited issues regarding a manifestation determination and Student asserted that he intended to raise expedited claims, the expedited time frame applies. Further clarification of the expedited issues may be discussed at the expedited prehearing conference. Accordingly, the motion to unexpedite must be denied.

ORDER

1. The motion to unexpedite the hearing dates is denied.
2. The expedited hearing shall proceed on issues 19, 20, and 21, as scheduled.

IT IS SO ORDERED.

Marlo Nisperos

Marlo Nisperos

Administrative Law Judge

Office of Administrative Hearings