BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT

v.

POWAY UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2022060819

# ORDER GRANTING JOINT MOTION TO UNEXPEDITE HEARING

JULY 15, 2022

On June 27, 2022, Student filed a Due Process Hearing Request, known as a complaint, against Poway Unified School District. On June 29, 2022, 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, referred to as the Scheduling Order. The Scheduling Order set this matter for expedited mediation on July 13, 2022, expedited prehearing conference on July 18, 2022, and expedited hearing for July 26 through 28, 2022.

On July 12, 2022, 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. (*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

Student did not include a request for an expedited hearing as part of his complaint. The complaint referenced the fact that Student was suspended from his placement and that no manifestation determination hearing was held. However, the joint motion to unexpedite reports that Student does not seek to have a manifestation determination held and that Student, having enrolled in a charter school, does not wish to return to his prior placement. Student alleges only that Poway failed to provide him

with an appropriate educational placement. The joint motion expressly states that Student "waives and withdraws" any claims that would require expedited hearing.

The parties have demonstrated that no expedited issues were alleged in the complaint, so that an expedited hearing is not required. Although the complaint alleges that no manifestation determination was held following his suspension, Student did not intend to raise it as an issue. Further, as Student is now attending a charter school and does not wish to be restored to his prior placement, any possible expedited issue is moot. 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 at pp. 1068-1071.) Accordingly, the expedited hearing dates will be vacated.

## ORDER

1. The joint motion to unexpedite this matter is granted.
2. The matter shall proceed on the remaining issues on the dates set in the June 29, 2022 Scheduling Order. The prehearing conference will be held on August 8, 2022, at 10:00 AM. Hearing of this matter will take place from August 16, 2022, to August 18, 2022.

*Chris Butchko*

Chris Butchko
Administrative Law Judge
Office of Administrative Hearings