BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

MOUNT DIABLO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024060806

ORDER FOLLOWING EXPEDITED PREHEARING CONFERENCE GRANTING MOTION TO UNEXPEDITE AND VACATING EXPEDITED HEARING DATES

JULY 8, 2024

On July 8, 2024, Administrative Law Judge Rommel P. Cruz, Office of Administrative Hearings, held an expedited prehearing conference by videoconference. The Administrative Law Judge is called an ALJ. The Office of Administrative Hearings is called OAH. The prehearing conference is called a PHC.

Attorney Sean Hobson appeared on behalf of Student. Attorney Elizabeth Schwartz appeared on behalf of Mount Diablo Unified School District. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

MOTION TO UNEXPEDITE

On July 2, 2024, Mount Diablo Unified filed a motion to unexpedite the due process hearing and to vacate the expedited hearing dates. Mount Diablo Unified contends Student's claims raised in his due process hearing request, called a complaint, do not involve an appeal under title 20 United States Code section 1415, subdivision (k).

Among the claims raised in Issue 2 of the complaint, Student contends Mount Diablo Unified failed to convene manifestation determination review meetings in April and May 2024. Mount Diablo Unified's motion included documentary exhibits of individualized education program team meetings of manifestation determination reviews held on April 17, 2024, and May 29, 2024, supported by a declaration by Mount Diablo Unified's attorney declaring the meetings were held on those dates. Mount Diablo Unified argues Student's complaint is not challenging a manifestation determination made by Mount Diablo Unified or a disciplinary change in his placement. Therefore, Mount Diablo Unified argues an expedited hearing in this matter is not warranted, and requests to vacate the expedited hearing dates.

At the PHC, Student withdrew the expedited claims involving the alleged failure by Mount Diablo Unified to convene manifestation determination review meetings. Student also represented that the remaining claims raised in his complaint do not involve an appeal under section 1415, subdivision (k), that requires an expedited hearing.

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 school 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).) 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 be unexpedited or continued if no issue is alleged that is subject to an expedited hearing or if the student elects to challenge the change of placement under title 20 United States Code 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.)

The motion to unexpedite is granted. Student withdrew his expedited claims. Accordingly, the expedited claims are dismissed, and the expedited hearing dates are vacated. The matter shall proceed as scheduled for Student's nonexpedited claims.

IT IS SO ORDERED.

Rommel P. Cruz

Rommel P. Cruz

Administrative Law Judge

Office of Administrative Hearings