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 2024120146

ORDER GRANTING MOTION TO UNEXPEDITE HEARING

DECEMBER 30, 2024

On December 4, 2024, Parent on behalf of Student filed with the Office of Administrative Hearings a due process hearing request, called a complaint, naming Poway Unified School District. The Office of Administrative Hearings is called OAH.

On December 5, 2024, based on issues asserted in the complaint, 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 an expedited mediation on December 18, 2024, an expedited prehearing conference on January 6, 2025, and an expedited hearing on January 14, 15, and 16, 2025.

On December 12, 2024, Student filed a motion to unexpedite this matter and vacate the expedited dates. On December 13, 2024, Poway Unified filed a non-opposition to the motion.

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 (*Molina*).)

Student's motion contends the issues raised in the complaint are not subject to an expedited hearing, nor does Student request a remedy that can be provided through an expedited hearing. Student's motion asserts that he was not removed, and is not facing removal, from his current placement for disciplinary reasons. Further, Student argues that none of the claims raised in the complaint involve an appeal under title 20

United States Code section 1415(k). Rather, Student represents that the issues raised in the complaint are based on title 20 United States Code section 1415(b)(6)(A).

Among the issues raised in Student's complaint, Student contends Poway Unified failed to reach the correct determination at the manifestation determination review meetings held in February and March 2024. However, Student asserts his claims related to the manifestation determination reviews do not involve an appeal under section 1415(k). Further, Student's proposed resolutions do not include overturning the determinations made at the February and March 2024 manifestation determination reviews. Although the complaint includes facts concerning manifestation determinations, Student did not intend to challenge the determinations as an appeal under section 1415(k). Instead, Student challenges the determinations under section 1415(b)(6)(A).

Student has demonstrated that no expedited issues are raised in the complaint, so that an expedited hearing is no longer required. Therefore, 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.) Accordingly, the expedited hearing dates will be vacated.

Student may only present his issues related to the manifestation determinations and the facts pertaining to it, as a denial of a free appropriate public education, and will be precluded from arguing any violations of the disciplinary provisions of the law that would require Poway Unified to hold a manifestation determination review meeting, or to overturn a manifestation determination, including those contained in title 20 United States Code section 1415(k)(3)(A), 34 Code of Federal Regulations part 300.532(a), and corresponding California law.

ORDER

1. Student's motion to unexpedite this matter is granted.
2. The expedited prehearing conference date of January 6, 2025 is vacated.
3. The expedited hearing dates of January 14, 15, and 16, 2025 are vacated.
4. The unexpedited matter shall proceed on January 22 and 23, 2025.
5. In the unexpedited matter, Student will be precluded from arguing any violations of the disciplinary provisions of the law that would require Poway Unified to hold a manifestation determination review meeting, or to overturn a manifestation determination, including those contained in title 20 United States Code section 1415(k)(3)(A), 34 Code of Federal Regulations part 300.532(a), and corresponding California law.

Rommel P. Cruz

Rommel P. Cruz

Administrative Law Judge

Office of Administrative Hearings