BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

SAN JUAN UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024090902

ORDER DENYING MOTION TO UNEXPEDITE HEARING

SEPTEMBER 30, 2024

On September 24, 2024, Student filed a request for due process hearing, complaint, against San Juan Unified School District. On September 25, 2024, 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 October 8, 2024, expedited prehearing conference on October 14, 2024, and expedited hearing for October 22, 23, and 24, 2024.

On September 26, 2024, Student filed a motion to unexpedite this matter and vacate the expedited dates. On September 26, 2024, San Juan filed a notice entitled non-opposition to Student's request to withdraw expedited issues. On September 27,

2024, Student filed a reply brief explaining Student sought to clarify the non-expedited nature of Student's issues and not to withdraw any issues.

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.)

Student's complaint alleges, as Issue 1, sudsection a, that San Juan denied her a free appropriate public education, FAPE, during the 2023-2024 through 2024-2025 school years by failing to conduct an assessment, including a manifestation determination and a functional behavior assessment. Student supported the issue by alleging that a one-day suspension in fall 2023 resulted in San Juan finding that Student's related behavior was a manifestation of her disability but still chose to penalize Student. Student also alleges that on October 26, 2023, San Juan advised

Parents that San Juan proposed a manifestation determination the following day. Student alleges San Juan held a manifestation determination meeting on October 27, 2023, but did not conduct a manifestation determination assessment. Student did not clarify what a manifestation determination assessment would entail. Student further alleged that San Juan relied on older assessments to determine that Student's behavior was a manifestation of her disability and not a result of failure to implement her individualized education program, IEP. Student further alleged that Parents disagreed with the latter conclusion.

Here, Student asserted an issue regarding a manifestation determination meeting. Student supported the issue with facts identifying Parents' disagreement with the manifestation determination meeting. That, alone, is enough to maintain expedited hearing dates. 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 as scheduled.

Cole Dalton

Cole Dalton
Administrative Law Judge
Office of Administrative Hearings