BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023070856

ORDER GRANTING MOTION TO UNEXPEDITE HEARING AND DISMISSING EXPEDITED ISSUE

AUGUST 04, 2023

On July 26, 2023, Student filed a Due Process Hearing Request, known as a complaint, against Los Angeles Unified School District. On July 27, 2023, based on issues asserted in the complaint, the Office of Administrative Hearings, referred to as OAH, issued a Scheduling Order Setting Dual Hearing Dates, Prehearing Conference and Mediation. The Scheduling Order set this matter for an expedited mediation on August 9, 2023, an expedited prehearing conference on August 14, 2023, and an expedited hearing on August 22 through 24, 2023.

On August 2, 2023, Student filed a motion to unexpedite this matter and vacate the expedited dates. On August 2, 2023, Los Angeles Unified filed a notice of non-opposition to Student's motion.

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. Board of Education of Los Lunas Schools* (D.N.M. 2016) 157 F.Supp.3d 1064, 1068-1071.)

DISCUSSION

Student's complaint alleges claims pertaining to the two-year period prior to the filing of the complaint on July 26, 2023. Student alleges Los Angeles Unified denied him a FAPE during the 2021-2022 and 2022-2023 school years by failing to assess him in all

areas of suspected disability, and by failing to provide him with an appropriate educational program, including appropriate related services/supports to meet his needs, and an academic placement in a nonpublic school. Student also asserts additional claims pertaining to Los Angeles Unified's alleged failure to implement his individualized educational program, or IEP, failing to timely hold an IEP team meeting, failing to report his present levels of performance and develop appropriate goals, failing to provide Parent prior written notice, and failing to timely provide Parent with an assessment claim.

Student also alleges in Issue 1f that Los Angeles Unified failed to hold a manifestation determination prior to demanding Parent withdraw Student from school in March 2022. Although Student did not request an expedited hearing, Issue 1f is an expedited claim, and the basis for OAH's issuance of a dual scheduling order setting this matter on expedited and non-expedited dates.

In the motion, Student argues he did not intend to raise claims under Title 20 United States Code section 1415(k). Student claims he is not subject to any current or pending disciplinary actions and is not appealing under Title 20 United States Code section 1415(k)(3). Student assets he is not seeking remedies under Title 20 United States Code section 1415(k) and withdraws Issue 1f to the extent this claim arises under Title 20 United States Code section 1415(k).

Although the complaint includes an expedited claim concerning Los Angeles Unified's failure to conduct a manifestation determination, Student now asserts he did not intend to raise it as an issue and, by his motion, has withdrawn Issue 1f. Given Student's withdrawal of Issue 1f, the mandatory provisions of Section 1415(k)(4)(B) for an expedited hearing no longer apply. (*Molina, supra,* 157 F.Supp.3d 1064, 1068-1071.)

Accordingly, the expedited prehearing conference and expedited hearing dates are vacated and Issue 1f is dismissed.

ORDER

1. The motion to unexpedite this matter is granted.
2. Issue 1f at page 9, lines 4 and 5 of the complaint is dismissed.
3. The following expedited dates are vacated: the expedited prehearing conference on August 14, 2023, and expedited hearing on August 22 through 24, 2023.
4. The mediation scheduled for August 9, 2023, remains on calendar unless cancelled by a party.
5. The unexpedited matter shall proceed on the following dates: the prehearing conference will take place on September 1, 2023, at 3:00PM and the due process hearing shall take place on September 12 through 14, 2023.

IT IS SO ORDERED.

Laurie Gorsline

Laurie Gorsline
Administrative Law Judge
Office of Administrative Hearings