BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT

v.

POWAY UNIFIED SCHOOL DISTRICT

OAH CASE NUMBER 2024030124

ORDER FOLLOWING PREHEARING CONFERENCE FOR EXPEDITED HEARING BY VIDEOCONFERENCE AND ORDER GRANTING MOTION TO UNEXPEDITE VACATING EXPEDITED DUE PROCESS HEARING DATES

MARCH 18, 2024

On March 18, 2024, Administrative Law Judge Chris Butchko, Office of Administrative Hearings, held a 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.

Margaret Adams, Attorney at Law, appeared on behalf of Student. Summer Vicknair, Attorney at Law, appeared on behalf of Poway Unified School District. The PHC

was recorded. Based upon discussion with the parties, the ALJ issues the following order:

STUDENT'S MOTION TO UNEXPEDITE

On March 1, 2024, Student filed a request for due process hearing, called a complaint. OAH identified issues in the complaint that require an expedited hearing and issued a scheduling order with both expedited and non-expedited prehearing conference and due process hearing dates. On March 13, 2024, Student filed a motion to unexpedite the expedited due process hearing. Poway stated at the PHC that it did not oppose the motion to unexpedite.

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).) 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) (2006).) 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 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.)

Issue 1 of Student's complaint asserts that in the 2021-2022 school year Student was removed from his educational placement for disciplinary reasons, and seeks compensation for the loss of educational services during that time. Elsewhere in the complaint, Student recounts that there was a manifestation determination review meeting held on March 11, 2022. Student, however, does not challenge the conduct of the review or decisions reached there. At the PHC, Student clarified that the claim relates only to educational loss and that Student was proceeding solely under title 20, section 1415, subdivision (b)(6)(A). Student does not allege facts that constitute an appeal pursuant to Section 1415(k)(3), and thus 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 are vacated.

OTHER PREHEARING CONFERENCE MATTERS

All other prehearing conference matters will be taken up at the prehearing conference already set in this matter for non-expedited issues, on April 8, 2024, at 3:00 PM. The parties must file new prehearing conference statements for that PHC.

SETTLEMENT

The parties are encouraged to continue working together to reach an agreement before the due process hearing. The parties shall inform OAH in writing immediately if they reach a settlement or otherwise resolve the dispute before the scheduled hearing. In addition, if a settlement is reached within five days of the scheduled start of the due process hearing, the parties shall also inform OAH of the settlement by telephone at (916) 263-0880. At the same time, the parties should send the signature page of the signed agreement or a letter withdrawing the case to OAH by visiting OAH Secure e-file at https://www.applications.dgs.ca.gov/oah/oahsftweb.

If a full and final written settlement agreement is reached after 4:00 PM the day prior to hearing, the parties shall leave a voicemail message regarding the settlement at (916) 274-6035. The parties should also leave contact information such as cellular phone numbers of each party or counsel for each party.

Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received and processed by OAH. If an agreement in principle is reached, the parties should plan to attend the scheduled hearing unless different arrangements have been agreed upon by the assigned ALJ. The assigned ALJ will check for messages before the hearing.

If the matter settles subject to board approval, in addition to a signed copy of the signature page of the settlement agreement, the parties shall provide the date of the next board meeting. The hearing dates will not be cancelled without this information.

FAILURE TO COMPLY

The failure to comply with this Order may result in the exclusion of evidence or other sanctions.

ORDER INCLUDES ALL RULINGS

This Order includes all rulings made at the prehearing conference. Any discussion and conversation not referenced in this Order is not binding on the ALJ conducting the hearing and may not be relied upon by the parties.

The parties should be aware that, at hearing, the ALJ conducting the hearing has discretion to reconsider any part of this Order.

IT IS SO ORDERED.

Chris Butchko

Chris Butchko
Administrative Law Judge
Office of Administrative Hearings