BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

EAST SIDE UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2024080256

ORDER DENYING MOTION TO UNEXPEDITE HEARING

AUGUST 14, 2024

On August 7, 2024, Student filed a Due Process Hearing Request, known as a complaint, against East Side Union High School District. On August 8, 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 August 21, 2024, expedited prehearing conference on August 26, 2024, and expedited hearing for September 4 and 5, 2024.

On August 7, 2024, East Side filed a motion to unexpedite this matter and vacate the expedited dates. On August 12, 2024, Student filed a non-opposition.

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

DISCUSSION

Student specifically asked for an expedited hearing which was in any event required because Student raises challenges to a manifestation determination.

East Side has failed to demonstrate that no expedited issues were alleged in the complaint, such that an expedited hearing is not required. Student alleges 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 apply. (*Molina, supra,* 157 F.Supp.3d 1064, 1068-1071.) Accordingly, the expedited hearing dates will not be vacated.

Student's "non-opposition" does not change the fact that Student has alleged claims that require an expedited hearing. Student is at liberty to, but has not withdrawn the issues from the complaint that are subject to an expedited due process hearing. Accordingly, the expedited hearing dates will not be vacated.

East Side and Student by non-opposition seek to vacate the expedited hearing dates even though issues raised in the complaint are subject to an expedited time frame. However, once these issues are raised, the expedited hearing time frame applies. Accordingly, the motion to unexpedite the hearing dates is denied.

ORDER

1. The motion to unexpedite the hearing dates is denied.
2. The expedited hearing shall proceed as scheduled.

June Lehrman

June Lehrman
Administrative Law Judge
Office of Administrative Hearings