BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

POWAY UNIFIED SCHOOL DISTRICT AND SAN DIEGO COUNTY OFFICE OF EDUCATION.

OAH CASE NUMBER 2024120146

ORDER GRANTING MOTION TO UNEXPEDITE HEARING

JANUARY 22, 2025

On December 4, 2024, Parent, on behalf of Student, filed a Due Process Hearing Request, also called a complaint, with the Office of Administrative Hearings, called OAH, naming Poway Unified School District as respondent. Pursuant to Student's request, expedited dates were vacated on December 26, 2024.

On December 30, 2024, Parent, on behalf of Student, filed a motion to amend the complaint to add San Diego County Office of Education as a respondent. That motion was granted on January 6, 2025 and an order correcting the caption to reflect the added respondent was issued on January 16, 2025.

On January 6, 2025, based on issues asserted in the complaint, which were pled identically to the original complaint, which was deemed expedited, 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 January 21, 2025, expedited prehearing conference on January 27, 2025, and expedited hearing on February 4, 5, and 6, 2025. A corrected order with the new caption was issued on January 16, 2025.

On January 16, 2025, Student filed a motion to vacate the expedited prehearing conference and hearing dates. On January 21, 2025, San Diego County Office of Education filed notice it did not oppose the motion. OAH received no response from Poway.

LIMITED BASES FOR VACATING EXPEDITED HEARING DATES

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. (*Ibid.*) Expedited hearing dates can only be vacated in three instances: 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 United States Code, title 20, section 1415,(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.)

Here, OAH determined an expedited hearing was required to address Student's allegations, among others, that Poway failed to reach correct manifestation determinations in February and March of 2024.

Student cites to prior OAH orders he argues state an expedited matter does not exist in cases that do not include current or pending disciplinary actions against Student." This statement is not supported by the law; and the cited OAH orders are not binding. (Cal. Code Regs., tit. 5, § 3085.) Nothing precludes a party from raising an expedited issue so long as it is still within the applicable statute of limitations. (20 U.S.C. § 1415(f)(C)(3); Ed Code § 56050(l); *Molina v. Board of Education of Los Lunas Schools*, (D. N.M. 2015) 157 F.Supp.3d 1064, 1067.)

Student's motion to unexpedite the amended complaint asserts, "Student's Request for Due Process did not intend to raise claims under title 20 United States Code section 1415(k)*;* instead, Student only intended to seek remedies only under 20 United States Code section 1415(b)(6)(A)." This statement is deemed to be Student's dismissal of claims under Unified States Code, title 20, section 1415(k).

ORDER

1. Student's motion to vacate expedited prehearing conference and hearing dates is granted.
2. Student may only present his issues and the facts pertaining to them, as denials of FAPE. Issues giving rise to expedited claims, including those

contained in 20 U.S.C. section 1415(k)(3)(A); 34 C.F.R. section 300.532(a); and corresponding California law, will not be adjudicated in this matter.

3. The Expedited Prehearing Conference and Expedited Hearing dates currently on calendar in this matter are vacated.

IT IS SO ORDERED.

Penelope Pahl

Penelope S. Pahl

Administrative Law Judge

Office of Administrative Hearings