

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

KERN HIGH SCHOOL DISTRICT.
OAH CASE NUMBER 2026090288

ORDER GRANTING MOTION TO UNEXPEDITE HEARING
AND CONFIRMING WITHDRAWAL OF EXPEDITED CLAIMS

SEPTEMBER 23, 2026

On September 9, 2026, Student filed a Due Process Hearing Request, known as a complaint, against Kern High School District. 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.

On September 14, 2026, Student filed a motion to unexpedite this matter and vacate the expedited dates. On September 15, 2026, Kern filed a non-opposition to Student's motion to unexpedite.

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 alleged three claims giving rise to the expedited portion of the hearing. Specifically, Student raised the following claims:

Issue 12: Did the District deny Student a FAPE by conducting an inadequate manifestation determination without an FBA (functional behavior assessment)?

Issue 13: Did the District deny Student a FAPE by forcing the Parent to accept the October 27, 2025, manifestation determination by threatening to expel Student if the Parent did not accept it?

Issue 16: Did the District deny Student a FAPE by conducting a flawed second manifestation determination at the April 16, 2026, IEP meeting?

In the Motion to Unexpedite, Student asserts that he did not intend to raise any claims under title 20 United States Code section 1415(k) and instead seeks only remedies under title 20 United States Code section 1415(b)(6)(A). That provision entitles a party to bring a claim, "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." Student claimed the, "assertion is effectively a withdrawal of Issues 12, 13, and 16 to the extent the claim arises under section 1415(k)(3)."

Student's complaint and Motion to Unexpedite are irreconcilable without a more detailed analysis. For example, Student's Issue 12 specifically challenges the adequacy of the manifestation determination, asserting it was flawed because there was no prior functional behavior analysis to consider. The complaint spends nearly eight pages reciting the requirements for disciplinary removals as required by section 1415(k). Yet, Student's Motion to Unexpedite says he has "effectively withdrawn" any expedited claim. Accordingly, Student's only remaining claim regarding Issue 12 is the failure to conduct an FBA prior to the October 27, 2025, manifestation determination review. Student cannot, therefore, challenge the appropriateness or outcome of the manifestation determination review because that challenge would require an expedited hearing which Student has withdrawn.

Student's Issue 13 alleges that Parent was forced to accept the October 27, 2025, manifestation determination by threatening to expel Student if the Parent did not accept. To the extent that Student was challenging the outcome of the manifestation determination review, that claim is withdrawn. Student's complaint also alleges this conduct violated other provisions of the federal code of regulations and "cited case law." No finding is made in this Order regarding whether OAH has jurisdiction to analyze the issue under those provisions or cases.

Student's Issue 16, as pled, again raises an expedited claim. It specifically challenges the appropriateness of an April 16, 2026, manifestation determination review. The complaint alleges among other things that the, "District violated the strict federal timeline requiring an MDR to be completed within 10 school days of the decision to change the student's placement, because Student was suspended on 10/16/2025, and the second MDR was held six (6) months later on 4/16/2026, which violates the 10 days [sic] rule." This is a challenge requiring an expedited due process hearing. However, Student also asserts that this second manifestation determination review was flawed because Kern did not conduct a functional behavior assessment between the first and second manifestation determination reviews. Additionally, Student requests in Proposed Resolution 21 that OAH "Order District to Overturn the flawed second Manifestation Determination." This proposed resolution can only be provided in an Expedited Hearing. (20 U.S.C. § 1415(k)(3)(B).)

Given Student's withdrawal of all expedited claims, the only remaining component of Student's Issue 16 is the failure to conduct a functional behavior assessment between October 27, 2025, and April 16, 2026. Student cannot challenge the appropriateness of or outcome of the April 16, 2026, manifestation determination review nor request that OAH to overturn the District's manifestation determination

because that challenge would require an expedited hearing which Student has withdrawn.

As discussed above, based on Student's withdrawal of expedited claims, an expedited hearing is no longer required. Although the complaint includes facts concerning the manifestation determination reviews, Student did not intend to raise those as issues, and thus that 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 will be vacated.

Consistent with this Order, Student may only present Issues 12, 13, and 16 and the facts pertaining to them, as a denial of FAPE, and prohibited from requesting that OAH overturn the second manifestation determination decision. Accordingly, Student will be precluded from arguing any violations of the disciplinary provisions of the law that Student would have to overturn a manifestation determination, including those contained in 20 U.S.C. section 1415(k)(3)(A); 34 C.F.R. part 300.532(a); and corresponding California law. Student's counsel is cautioned in future pleadings to be more careful in their pleadings and not use form pleading language if they only seek relief for denial of FAPE pursuant to Section 1415(b), and not Section 1415(k)(3) in how they frame issues related to the discipline of students.

ORDER

1. The motion to unexpedite this matter is granted.
2. The expedited prehearing conference and due process hearing dates are vacated.
3. Issues 12, 13, and 16, are limited to denial of FAPE claims.

IT IS SO ORDERED.

A handwritten signature in cursive script that reads "Joy Redmon".

Joy Redmon

Presiding Administrative Law Judge

Office of Administrative Hearings