BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

SAN MARCOS UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2022080656

ORDER DENYING MOTION TO UNEXPEDITE HEARING AND DENYING REQUEST FOR CONTINUANCE

DECEMBER 4, 2022

On November 9, 2022, the Office of Administrative Hearings, referred to as OAH, granted Student's motion to amend Student's Due Process Hearing Request, known as a complaint, against San Marcos Unified School District. On November 14, 2022, based on issues asserted in the complaint, 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 December 1, 2022, expedited prehearing conference on December 5, 2022, and expedited hearing for December 13, 2022.

On November 30, 2022, San Marcos filed a motion to unexpedite this matter and for OAH to hear all Student's issues at the unexpedited hearing set for December 28, 2022. On December 1, 2022, Student filed a non-opposition to San Marcos'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, 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

Among Student's claims is an issue alleging a denial of a free appropriate public education by "failing to conduct a manifestation determination after ordering that Andrew remain at home following the incident." The issue as pled gives rise to both an expedited and non-expedited claim. Student's non-opposition does not indicate that Student only intends to proceed with this issue as a denial of FAPE. Based on the issue as pled, it is deemed expedited.

San Marcos points to older OAH orders in support of its assertion that, because there is no disciplinary change of placement pending, no reason exists to hear this issue as an expedited claim. This interpretation is not consistent with applicable law. As pled, Student raises a claim arising under the expedited provisions of the IDEA. Further, prior administrative decisions are not binding precedent. (Cal. Code Regs., tit. 5, § 3085.) Once an expedited issue regarding a manifestation determination is raised, the expedited hearing time frame applies. Student has not withdrawn the issue from the amended complaint that is subject to a due process hearing nor submitted written documentation clarifying Student's intent to proceed with this claim only as a FAPE denial. Accordingly, San Marcos's motion to unexpedite the hearing dates must be denied.

ORDER

1. The motion to unexpedite the hearing and vacate the expedited hearing dates is denied.

2. The expedited prehearing conference and due process hearing shall proceed on Issue 2.g. as scheduled.

IT IS SO ORDERED.

Claire Yazigi

Claire Yazigi

Administrative Law Judge

Office of Administrative Hearings