BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

# IN THE MATTER OF:

# PARENT ON BEHALF OF STUDENT,

v.

# SAN DIEGO UNIFIED SCHOOL DISTRICT.

# OAH CASE NUMBER 2020100821

# ORDER DENYING MOTION TO UNEXPEDITE HEARING

NOVEMBER 9, 2020

On October 26, 2020, Student filed a Due Process Hearing Request, known as a complaint, against San Diego Unified School District. On October 28, 2020, 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 November 10, 2020. This mediation was cancelled at Student's request. The expedited prehearing conference is scheduled for November 20, 2020, and expedited hearing is set for December 1, 2, and 3, 2020.

On November 5, 2020, the parties filed a joint motion to unexpedite this matter and vacate the expedited dates.

## 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).) 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

It is the parties' position that this matter should be unexpedited because Student is not requesting relief of any remedy pertaining to the disciplinary provisions found in title 20 of the United States Code, section 1415(k), specifically return to his prior placement or an order reversing the manifestation determination review. Further, the parties maintain that Student will not be prejudiced if this matter proceeds on an unexpedited calendar and that the urgency contemplated by the disciplinary provisions do not apply to this matter as the manifestation determination was held nearly two years ago. The parties' arguments are not persuasive.

Student seeks to vacate the expedited hearing dates even though an issue raised in the complaint is subject to an expedited time frame. Issue 6 specifically raises a challenge to the 2018 manifestation determination review. Student asserts San Diego Unified failed to conduct an appropriate manifestation determination review. Student's complaint alleges facts and raises an issue that constitutes an appeal pursuant to Section 1415(k)(3). Therefore, 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 motion to unexpedite the hearing dates must be denied.

## ORDER

1. The motion to unexpedite the hearing dates is denied.
2. The expedited hearing shall proceed on Issue 6 as scheduled. The expedited prehearing conference will be held on November 20, 2020, at 1:00 p.m. The expedited hearing will proceed on December 1 through 3, 2020, at 9:30 a.m. each day, and continuing day-to-day at the discretion of the administrative law judge.

## IT IS SO ORDERED.

*Theresa Ravandi*

Theresa Ravandi
Administrative Law Judge
Office of Administrative Hearings