BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

SEQUOIA UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2024040286

ORDER DENYING WITHOUT PREJUDICE MOTION TO UNEXPEDITE HEARING

APRIL 23, 2024

On April 5, 2024, Student filed a Due Process Hearing Request, known as a complaint, against Sequoia Union High School District, called Sequoia Union. On April 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 April 25, 2024, expedited prehearing conference on April 29, 2024, and expedited hearing for May 7 through 9, 2024.

On April 16, 2024, Sequoia Union filed a motion to unexpedite this matter and vacate the expedited dates. OAH did not receive a response from Student.

Sequoia Union's motion to unexpedite the hearing is tantamount to a summary judgment motion without an evidentiary hearing.

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 United States Code section 1415, subdivision (b)(6)(A) and not subdivision (k). (*Molina v. Board of Educ. of Los Lunas Schools* (D.N.M. 2016) 157 F.Supp.3d 1064, 1068-1071.)

DISCUSSION

Student alleges that beginning May 2022, Sequoia Union denied him a free appropriate public education by:

- failing to offer appropriate goals, specialized academic instruction, related services, transition services, and accommodations;

- failing to allow parents to meaningfully participate in the individualized education program, called IEP;

- failing to conduct appropriate assessments for psychoeducation, behavior, speech and language, mental health, and a special circumstance instructional aide; and

- failing to convene a Manifestation Determination meeting after Student's five-day suspension on October 27, 2023. (Issue 25)

Specifically, Student asserts Sequoia Union's failure to convene a Manifestation Determination meeting impeded parents' ability:

- to participate in the IEP decision-making process;

- to discuss Student's behavioral needs with his IEP team;

- to request a behavior assessment; and

- to develop behavior goals with a behavior plan and behavior services.

Student requests compensatory education and independent evaluations. Student does not request a Manifestation Determination meeting as a proposed remedy.

In Issue 25, Student alleges issues that may be the subject of an expedited hearing. The complaint alleges facts concerning Student's behavioral episodes and Paragraphs 48 through 59, and 89, reference several five-day suspensions.

Student did not withdraw Issue 25 that triggered the expedited hearing.

Student did not seek to clarify the issue surrounding the Manifestation Determination meeting and indicate whether he elects to challenge the change of

placement under title 20 United States Code section 1415, subdivision (b)(6)(A) and not subdivision (k). It is unclear whether Student alleges Issue 25 to obtain an order requiring Sequoia Union to hold such a meeting, or only to prove that Sequoia Union was aware of maladaptive behaviors but failed to assess or address them.

Sequoia Union has not demonstrated that no expedited issues were alleged in the complaint or that circumstances have changed, so that an expedited hearing is no longer required. Accordingly, the expedited matter cannot be decided without holding an evidentiary hearing, unless Student withdraws the expedited claim or clarifies that he did not assert Issue 25 to obtain an order requiring Sequoia Union to hold a Manifestation Determination.

Accordingly, Sequoia Union's motion to unexpedite the hearing must be denied without prejudice to Sequoia Union asserting as a defense at the expedited hearing all the law and arguments made in the motion. (*Molina, supra,* 157 F.Supp.3d at pp. 1068-1071.)

ORDER

1. Sequoia Union's motion to unexpedite the hearing is denied without prejudice.

2. Student should be prepared to discuss, clarify, and/or dismiss Issue 25 at the expedited prehearing conference on April 29, 2024. If Student intends to proceed with the expedited claim, Student should also be prepared to explain at the expedited prehearing conference how a five-day suspension triggered a right to have a manifestation determination meeting.

3. The expedited hearing shall proceed on Issue 25 as scheduled on May 7 through 9, 2024.

IT IS SO ORDERED.

Deborah Myers Cregar

Deborah Myers-Cregar

Administrative Law Judge

Office of Administrative Hearings