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 GRANTING MOTION TO UNEXPEDITE HEARING

NOVEMBER 18, 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 mediation was cancelled at Student's request. The expedited prehearing conference is scheduled for November 20, 2020, and the expedited hearing is set for December 1 through 3, 2020.

On November 9, 2020, OAH issued an Order Denying Joint Motion to Unexpedite Hearing on the basis Issue 6 of the complaint specifically raises a challenge to a 2018 manifestation determination review conducted by San Diego Unified School District. The Order determined the mandatory provisions of 20 U.S.C. § 1415(k)(4)(B) for an

expedited hearing apply. The November 9, 2020 Order further denied the parties' joint request to expedite the hearing dates.

On November 12, 2020, Student filed a Motion to Withdraw Without Prejudice Issue 6 of the complaint. OAH will consider Student's Motion to Withdraw as a Motion to Unexpedite Hearing. On November 17, 2020, San Diego Unified School District filed a Statement of Non-Opposition and requested that OAH remove the expedited hearing dates from the calendar.

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

Issue 6 of Student's complaint seeks a determination that San Diego Unified School District denied him a free appropriate public education during the 2018-2019 school year by failing to conduct an appropriate manifestation determination review. The complaint does not allege that Student's placement was changed as a result of the incident resulting in the manifestation determination.

A withdrawal of the issue that triggered the expedited hearing is grounds to unexpedite a hearing. (*Molina v. Bd. of Educ. of Los Lunas Schools, supra,* 157 F.Supp.3d at 1068-1071.) Student seeks to withdraw the sole issue from the complaint that is subject to an expedited due process hearing. More specifically, Student's seeks to withdraw Issue 6 of the complaint which challenged the appropriateness of the December 2018 manifestation determination. Student's request to withdraw Issue 6 is granted. Further, the expedited hearing dates are vacated.

ORDER

1. The motion to withdraw Issue 6 of the complaint without prejudice is granted. Issue 6 is hereby dismissed.
2. The following expedited dates are vacated: prehearing conference scheduled for November 20, 2020 at 1:00 PM and due process hearing scheduled for December 1 through 3, 2020 at 9:30 AM.
3. The unexpedited hearing on Issues 1, 2, 3, 4, 5 and 7 shall proceed as currently scheduled. The unexpedited prehearing conference will proceed on December 7, 2020 at 3:00 pm. The unexpedited due process hearing will proceed on December 15 through 17, 2020, commencing at 9:30 AM

each day, and continuing from day-to-day at the discretion of the administrative law judge.

IT IS SO ORDERED.

Jennifer Kelly

Jennifer Kelly

Administrative Law Judge

Office of Administrative Hearings