BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2022030693

ORDER DENYING MOTION TO UNEXPEDITE HEARING

APRIL 1, 2022

On March 18, 2022, Student filed a Due Process Hearing Request, known as a complaint, against Los Angeles Unified School District. On March 21, 2022, 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 5, 2022, expedited prehearing conference on April 18, 2022, at 10:00 am, and expedited hearing for April 26, 27, and 28, 2022.

On March 28, 2022, Student, filed a motion to unexpedite this matter and vacate the expedited dates. On March 29, 2022, Los Angeles filed a non-opposition.

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.)

A due process hearing must be conducted, and a decision rendered, within 45 days of receipt of the complaint unless an extension is granted. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Speedy resolution of the due process hearing is mandated by law and continuance of the hearing may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f)(3).) In ruling upon a motion for continuance, OAH is guided by the provisions found within the Administrative Procedure Act and the California Rules of Court that concern motions to

continue. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, 3.1332.) Generally, continuances of matters are disfavored. (Cal. Rules of Court, 3.1332(c).)

DISCUSSION

Issue Five of Student's complaint is an expedited issue. Issue Five alleges that Los Angeles denied Student a free appropriate public education, called a FAPE, by failing to provide proper and timely written notice of Student's manifestation determination meeting. Student asserts this interfered with Student having proper legal representation at the manifestation determination meeting, as well as his inclusion of individuals at the meeting who could provide relevant information. As proposed resolutions for Issue Five, Student requests staff training for staff on the requirements of manifestation determination meetings as well as an order requiring Los Angeles to remove reference of the disciplinary incident and the resulting manifestation determination from Student's records.

Although stated as a denial of FAPE, this is a direct challenge of the sufficiency of the manifestation meeting pursuant to 20 USC 1415 (k). A manifestation determination meeting is not the same as an IEP team meeting. A manifestation determination meeting is a meeting authorized under 20 USC 1415(k). It follows that OAH must analyze this issue based on the requirements of 20 USC 1415(k). Accordingly, the issue requires an expedited hearing and OAH cannot make an exception. Once expedited issues are raised, the expedited hearing time frame applies. Accordingly, Student's motion to unexpedite the due process hearing is Denied. Only Student's withdrawal of Issue Five will result in the expedited hearing being vacated. Student's argument that Issue Five does not raise a claim for which an expedited hearing is warranted or seek remedies made available under 20 USC 1415(k) is rejected as unpersuasive.

Student's Issue Six was discussed in Student's Motion to Unexpedite. Issue Six of Student's complaint alleges a failure to implement Student's IEP following the manifestation determination meeting. Student asserts that this was not intended as an expedited issue. OAH agrees that Issue Six is not an expedited issue.

ORDER

1. The motion to unexpedite the hearing dates is denied.
2. The expedited hearing shall proceed on Issue Five as scheduled. The Expedited Mediation shall be held on April 5, 2022, from 9:00 am to 12:30 pm; the Expedited Prehearing Conference on April 18, 2022, at 10:00 am; and the Expedited Due Process Hearing on April 26, 27, and 28, 2022.

IT IS SO ORDERED.

Rita Defilippis

Rita Defilippis
Administrative Law Judge
Office of Administrative Hearings