BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

POWAY UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2025040374

ORDER DENYING MOTION TO UNEXPEDITE HEARING

MAY 1, 2025

On April 8, 2025, Student filed a Due Process Hearing Request, known as a complaint, against Poway Unified School District. On April 9, 2025, 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 29, 2025, expedited prehearing conference on May 5, 2025, and expedited hearing for May 13, 2025 through May 15, 2025.

On April 30, 2025, Poway filed a motion to unexpedite this matter and vacate the expedited dates. On May 1, 2025, Student filed a notice of non-opposition to Poway's motion to unexpedite.

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.)

Students Issue Number 9 alleges that Poway removed Student from school early nearly 50 times between February and August 2024, based on disability related behaviors. Student contends the removals constituted a de facto change in placement. Student also contends that Poway should have conducted a manifestation determination review meeting to determine whether Student's behaviors were a manifestation of his disability and whether his IEP and behavioral supports were appropriate. Failure to hold a manifestation determination review, under the circumstances alleged, falls under 20 U.S. C. § 1415, subdivision (k), regarding expedited

due process hearings. The statutory scheme under the IDEA does not allow OAH to unexpedite such matters.

Rather, once expedited issues are raised, the expedited hearing time frame applies. Accordingly, the motion to unexpedite the hearing dates must be denied. Student is free to either withdraw the expedited issue or amend their complaint to eliminate the expedited issue, but the matter cannot be unexpedited by way of Poway's motion.

ORDER

1. The motion to unexpedite the matter is denied.
2. The expedited hearing shall proceed on Issue Number 9 as currently scheduled.

IT IS SO ORDERED.

Ted Mann

Ted Mann
Administrative Law Judge
Office of Administrative Hearings