BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

EAST SIDE UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2019101137

ORDER DENYING MOTION TO UNEXPEDITE HEARING

On October 28, 2019, Student filed a Due Process Hearing Request, known as a complaint, against East Side Union High School District. On October 29, 2019, 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 7, 2019, expedited prehearing conference on November 8, 2019, and expedited hearing for November 19, 2019 through November 21, 2019.

On October 31, 2019, East Side filed a motion to unexpedite this matter and vacate the expedited dates. On November 1, 2019, Student filed a response asserting that the issue to be addressed at the expedited due process hearing was whether East Side had a basis of knowledge that Student might be a child with a disability, thereby

entitling him to a manifestation determination under the Individuals with Disabilities in Education Act, often referred to as IDEA.

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

Student requested an expedited due process hearing based on a pending expulsion hearing for an incident that occurred on September 25, 2019. Student pled issues asserting a violation of 20 U.S.C. section 1415(k)(5), which, if established, protects children not yet determined to be eligible for special education. Student asserts East

Side failed to properly convene a manifestation determination review prior to initiating the expulsion.

East Side argues Student is a general education student, not subject to the protections of the IDEA. East Side asserts the complaint is void of facts that show it had a basis of knowledge that Student suffered from a disability prior the incident on September 25, 2019. East side states the absence of written concerns by Student's parents or referral for special education assessments until after the offence demonstrates the basis of knowledge element is missing and the case should be unexpedited. Even assuming all allegations are correct, these are questions of fact that must resolved at hearing. Thus, East Side's motion to unexpedite Student's request for due process is denied.

ORDER

1. The motion to unexpedite the hearing is denied.
2. The expedited hearing shall proceed as scheduled.

IT IS SO ORDERED.

DATED: November 5, 2019

DocuSigned by:
Marlo Nisperos
97112E4B27A64FF...

Marlo Nisperos
Administrative Law Judge
Office of Administrative Hearings