BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. DELTA CHARTER HIGH SCHOOL, NEW JERUSALEM SCHOOL DISTRICT AND SAN JOAQUIN COUNTY OFFICE OF EDUCATION.	OAH Case No. 2015090690 ORDER DENYING MOTION TO UNEXPEDITE HEARING

On September 8, 2015, Parent on behalf of Student filed with the Office of Administrative Hearings a Due Process Hearing Request (complaint) naming Delta Charter High School, New Jerusalem School District, and San Joaquin County Office of Education. The complaint is long-running, with approximately 10 pages of detailed facts and contentions, alleging matters for expedited and non-expedited hearing. The complaint contains expedited hearing allegations regarding manifestation determination decisions made by Delta and New Jerusalem in September 2015 and October and November 2014, in addition to allegations involving other, non-expedited, substantive violations of the Individuals with Disabilities Education Act.

On October 7, 2015, David Thoming, Superintendent of New Jerusalem, filed a motion to dismiss Student's expedited issues for hearing on the grounds that New Jerusalem is not seeking to change Student's placement.[1] On October 8, 2015, OAH issued an order seeking additional information from Student, Delta, and New Jerusalem regarding the outcome of the October 2014 manifestation determination meetings, and whether a manifestation determination meeting took place in September 2015, and if so, its outcome. New Jerusalem submitted additional information on October 9, 2015, and Student on October 13, 2015.

[1] It is unclear if Mr. Thoming is filing this motion to unexpedite on behalf of both Delta and New Jerusalem. Mr. Thoming's signed Delta's September 17, 2015 notice of insufficiency as Delta's Superintendent. If Mr. Thoming is signing pleadings on behalf of both Delta and New Jerusalem, he needs to identify himself as such.

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).) 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) (2006).) 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.*) In sum, a matter can only be unexpedited or continued if no issue is alleged that is subject to an expedited hearing, or if the student withdraws the issues in the complaint that triggered the expedited hearing.

DISCUSSION

A review of Student's complaint and documents provided by the parties establish an expedited issue for hearing regarding the 2014-2015 school year as the allegations and documents provided indicate Student was suspended for more than 10 school days on or about October and November 2014, and the manifestation determination decisions were that Student's disciplinary conduct was not a manifestation of his disability.

As to the allegations in Student's complaint and information in documents Student provided regarding the 2015-2016 school year, Delta and/or New Jerusalem were required to hold a manifestation determination if Student's suspension was 10 days or less. (20 U.S.C. § 1415(k)(1)(C); 34 C.F.R. § 300.530(c) (2006).) However, they did hold a manifestation determination, and factual hearing is required to determine if such a meeting was required and if so, whether a proper determination was made.

Accordingly, Student is entitled to an expedited hearing regarding whether Student's disciplinary conduct during October and November 2014, that led him to be suspended for more than 10 non-consecutive school days, was a manifestation of his disability and were related disciplinary incidents. Further, Student is entitled to an expedited hearing regarding the August 2015 disciplinary incident as a manifestation determination meeting was held in September 2015, even though Student was only suspended for five school days, which determined that his disciplinary conduct was not a manifestation of disability.

ORDER

1. The motion to unexpedite the hearing dates is denied.

2. The hearing shall proceed as scheduled:

DATE: October 15, 2015

/S/

PETER PAUL CASTILLO
Presiding Administrative Law Judge
Office of Administrative Hearings