BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH CASE NO. 2013070150
v.	ORDER GRANTING MOTION TO UNEXPEDITE HEARING
SAN JOSE UNIFIED SCHOOL DISTRICT.	

On June 28, 2013, Student filed a Due Process Hearing Request (complaint) against the San Jose Unified School District (District). On July 3, 2013, the Office of Administrative Hearings (OAH) issued a Scheduling Order and Notice of Expedited and Non-Expedited Due Process Hearing and Mediation (Scheduling Order). The Scheduling Order set the expedited mediation for this matter on July 11, 2013 and the expedited hearing July 23, 24 and 25, 2013. The Scheduling Order set the non-expedited mediation for August 1, 2013 and the non-expedited hearing for August 22, 2013 and continuing day to day.

On July 8, 2013, Student filed a motion to unexpedite this matter and vacate the expedited dates. On July 8, 2013, the District also filed a motion to unexpedite this matter and vacate the expedited dates. Both motions claim that Student's Issue No. 11, as written, does not give rise to an expedited hearing because Student does not claim disagreement with a change in educational placement based upon a violation of a code of student conduct or disagree with a manifestation determination made by the District.

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.*) If there is no current or pending disciplinary action against Student, grounds do not exist for an expedited hearing. (S*tudent v. Los Angeles Unified School District* (2011) Cal. Ofc. Admin. Hrngs, Case No. 2011030809.) 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

In Issue No. 11 in the complaint, Student references a manifestation determination meeting held in January 2012. This meeting happened more than a year ago and there is no current or pending disciplinary action against Student. Moreover, the parties agreed with the manifestation determination and Student did not suffer a change in placement. Therefore, grounds do not exist for an expedited hearing and the motion to unexpedite the matter is granted.

ORDER

1. The motion to unexpedite this matter is granted.

2. The following expedited dates are vacated: Mediation July 11, 2013, Prehearing Conference July 15, 2013, and Hearing dates of July 23, 24, and 25, 2013.

Dated: July 9, 2013

/s/
MARGARET BROUSSARD
Administrative Law Judge
Office of Administrative Hearings