BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2015120472
v.	ORDER GRANTING MOTION TO UNEXPEDITE HEARING AND DENYING MOTION TO DISMISS OR CONTINUE EXPEDITED HEARING DATES AS MOOT
MANTECA UNIFIED SCHOOL DISTRICT.	

On December 10, 2015, Student filed a request for due process hearing (complaint) against Manteca Unified School District and San Joaquin County Office of Education.[1] On December 14, 2015, the Office of Administrative Hearings issued a Scheduling Order Notice of Dual Hearing Dates Including Expedited Hearing, Prehearing and Mediation (Scheduling Order). The Scheduling Order set this matter for expedited mediation on December 17, 2015, expedited prehearing conference on December 28, 2015, and expedited due process hearing on January 6 and 7, 2016. The Scheduling Order set this matter for non-expedited mediation on January 20, 2016, non-expedited prehearing conference on January 22, 2016, and non-expedited due process hearing on January 28, 2016.

On December 17, 2015, Manteca filed a motion to dismiss, unexpedite or continue expedited hearing dates in this matter. No response was received by Student.

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).[2]) An expedited due process hearing before

[1] San Joaquin County Office of Education was dismissed as a party by OAH on December 18, 2015.

[2] All subsequent references to the Code of Federal Regulations are to the 2006 version.

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.*) 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

Student did not request an expedited hearing in this matter. OAH set the matter for an expedited hearing because Student made factual allegations relating to Student's suspensions, threatened expulsions, and manifestation determinations between the 2011-2012 and 2015-2016 school years.

Manteca has established that no expedited issues were alleged in the complaint, so that an expedited hearing is no longer required. Although Student's complaint alleges facts relating to disciplinary action against Student and disagreement with at least one manifestation determination conducted by Manteca, these underlying facts are provided as background for the issues alleged in the complaint. None of the 32 issues raised in Student's complaint relates to a change in educational placement of Student based upon a violation of a code of student conduct or a disagreement with a manifestation determination made by Manteca within the applicable statute of limitations period. Accordingly, the expedited hearing dates will be vacated. Manteca's motion to dismiss or continue the expedited hearing dates is denied as moot.

ORDER

1. The motion to unexpedite this matter is granted.

2. The following expedited dates are vacated: expedited prehearing conference on December 28, 2015, and expedited due process hearing on January 6 and 7, 2016.

3. This matter shall proceed on the following dates: non-expedited mediation on January 20, 2016, non-expedited prehearing conference on January 22, 2016, and non-expedited due process hearing on January 28, 2016.

IT IS SO ORDERED.

DATE: December 23, 2015

/s/

DENA COGGINS
Administrative Law Judge
Office of Administrative Hearings