BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. OAKLAND UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2013100547 ORDER DENYING MOTION TO UNEXPEDITE HEARING

On October 14, 2013, Student filed a Due Process Hearing Request (complaint) against the Oakland Unified School District. On October 16, 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 this matter for an expedited mediation on October 29, 2013, an expedited prehearing conference (PHC) on November 4, 2013, and an expedited due process hearing beginning on November 13, 2013. The Scheduling Order also set this matter for a non-expedited mediation on November 20, 2013, a non-expedited PHC on December 2, 2013, and a non-expedited due process hearing beginning on December 10, 2013.

On October 17, 2013, both Student and District filed documents requesting that the dates in the expedited matter be vacated and the entire case proceed on the non-expedited hearing calendar. The parties assert that student mistakenly filed a proof of service stating that there was a motion for an expedited hearing.

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

Here, both parties contend that Student mistakenly filed a proof of service with the complaint that asserted Student was filing and serving upon OAH and District a motion and proposed order for an expedited hearing. The parties' assertion that Student's complaint is accompanied by an erroneous proof of service is correct. However, it is the substance of Student's complaint that is the reason why OAH has deemed some issues in this case as suitable for an expedited hearing.

One of the issues raised for determination in Student's complaint alleges that "[District] denied Student of [sic] a FAPE [free appropriate public education], as follows: At the March 4, 2013 Manifestation Determination Review, [District's] finding that Student's behavior was not a manifestation of his disability was predetermination by the district and not supported by substantial evidence." Student is therefore disagreeing with and challenging the findings of the March 4, 2013 manifestation determination. Such a disagreement and challenge falls squarely within the applicable law discussed above, and this issue is appropriate for determination through an expedited due process hearing. Should Student withdraw this issue, the matter may be unexpedited. Accordingly, the parties' request to unexpedite this matter is denied.

ORDER

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

2. The hearing shall proceed as scheduled.

Dated: October 21, 2013

/s/

BOB N. VARMA
Presiding Administrative Law Judge
Office of Administrative Hearings