BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SANTA CLARA COUNTY OFFICE OF EDUCATION.	OAH Case No. 2015050597 ORDER GRANTING MOTION TO UNEXPEDITE HEARING

On May 8, 2015, Parent on behalf of Student filed a Due Process Hearing Request naming Santa Clara County Office of Education. On May 20, 2015, the Office of Administrative Hearings granted Student's motion to file an amended complaint which was deemed filed as of that date. On May 20, 2015, OAH issued a Scheduling Order and Notice of Expedited and Non-Expedited Due Process Hearing and Mediation. The Scheduling Order set this matter for the following expedited dates: due process hearing on June 18, 22, and 23, 2015, with a pre-hearing conference on June 12, 2015, and mediation on June 4, 2015.

On May 27, 2015, Santa Clara filed a motion to unexpedite this matter and vacate the expedited dates on the grounds that there is no pending or current disciplinary action. On May 29, 2015, Student filed a request to unexpedite this matter because she did not intend to litigate any expedited issues.

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

OAH set this matter for an expedited hearing because Student raised a challenge to the manifestation determination review team meeting convened in February 2014. Specifically, Student alleged a failure to provide a functional behavior assessment or behavior intervention services, and challenged the change in Student's placement outside of the IEP team process.

Student clarified in her request to unexpedite that she has not alleged issues that would trigger the disciplinary provisions of the IDEA. Accordingly, an expedited hearing is no longer required. Specifically, although the complaint includes facts regarding the manifestation determination, Student is not challenging the manifestation determination review or any related actions. Therefore, Student's Issue 1(g), (h), and (l), alleging failures to provide a functional behavior assessment, adequate behavior services, and an improper change in placement, will all be treated as denials of a free appropriate public education by failing to meet her unique needs and by changing her placement outside of the individualized education program team meeting process, as opposed to challenges to the manifestation determination review. Accordingly, the expedited hearing dates will be vacated.

ORDER

1. The motion to unexpedite this matter is granted.

2. The following expedited dates are vacated: Mediation on June 4, 2015; PHC on June 12, 2015; and hearing on June 18, 22, and 23, 2015.

3. This matter shall proceed on the following dates: Mediation June 24, 2015; PHC July 6, 2015, at 3:00 p.m.; and due process hearing July 14, 2015, at 9:30 a.m., and continuing day-to-day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.

DATE: May 29, 2015

/s/

JOY REDMON
Administrative Law Judge
Office of Administrative Hearings