BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS ON BEHALF OF STUDENT, v. TEMECULA VALLEY UNIFIED SCHOOL DISTRICT.	OAH Case No. 2015040457 ORDER DENYING MOTION TO UNEXPEDITE HEARING

On April 7, 2015, Student filed a Due Process Hearing Request (complaint) naming the Temecula Valley Unified School District. On April 15, 2015, the Office of Administrative Hearings 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 April 21, 2015 and the expedited hearing on May 5-7, 2015. The Scheduling Order set the non-expedited mediation for May 12, 2015, and the non-expedited hearing for June 2, 2015 and continuing day-to-day thereafter.

On April 16, 2015, Student and Temecula jointly filed a motion to unexpedite the 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, Student's complaint does not expressly request an expedited hearing. Instead, the complaint alleges that Temecula, during the 2014-2015 school year, improperly concluded that Student's conduct was not a manifestation of his disability at both a September 17, 2014, and September 24, 2014 manifestation determination team meetings. This allegation demonstrates a disagreement by Student with a manifestation determination made by Temecula, which must be litigated on an expedited basis.

Therefore, while the parties contend that Student's complaint does not give rise to an expedited hearing because there was no current or pending disciplinary action against Student, and a change in Student's educational placement based upon a violation of a code of student conduct was not pending or contemplated by Temecula, the parties' argument is unpersuasive. Accordingly, the request to unexpedite this case is denied, and the case shall continue to be set for both the expedited and the non-expedited hearings.

ORDER

1. The request to unexpedite the hearing request is denied, and all expedited and the non-expedited dates are confirmed and this matter shall proceed on the dates provided in the April 15, 2015 Scheduling Order.

Dated: April 17, 2015

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings