

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

SAN JOSE UNIFIED SCHOOL DISTRICT.

OAH Case No. 2014071195

ORDER GRANTING MOTION TO
UNEXPEDITE HEARING

On July 25, 2014, Parents on behalf of Student (Student) filed with the Office of Administrative Hearings a Due Process Hearing Request (complaint) naming the San Jose Unified School District (San Jose). On July 31, 2014, 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 August 12, 2014, the Prehearing Conference for August 18, 2014, and the expedited hearing August 26, 27 and 28, 2014. The Scheduling Order set the non-expedited mediation for September 2, 2014, the Prehearing Conference for September 12, 2014, and the non-expedited hearing for September 18, 2014 and continuing day to day.

On August 5, 2014, San Jose filed a motion to unexpedite this matter. On August 7, 2014, Student filed a statement of non-opposition to the motion.

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. (*Student 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

Student's complaint alleges three issues. The first two issues are based on San Jose failing to timely complete assessments of Student. The third issue is that San Jose failed to provide Student with appropriate placement and services during 2013-2014. Student cites to a manifestation hearing being cancelled because of San Jose's failure to timely complete assessments of Student as a supporting fact to the second issue. In fact, Student alleges that San Jose "abandoned" its efforts to discipline Student. In his statement of non-opposition, Student states that he "agrees there is no current or pending disciplinary action" pending.

Based on the above, grounds do not exist for conducting an expedited hearing.

ORDER

1. The motion to unexpedite this matter is granted.
2. The following expedited dates are vacated: Mediation August 12, 2014, Prehearing Conference August 18, 2014, and Hearing dates of August 26, 27, and 28, 2014.

DATE: August 07, 2014

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings