BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. BALDWIN PARK UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2013050637 ORDER DENYING DISTRICT'S MOTION TO UNEXPEDITE HEARING

On May 20, 2013, Student filed a Request for Due Process Hearing and Mediation (Complaint) which included a claim that the Baldwin Park Unified School District (District) denied Student's procedural right to a manifestation determination review after Student's tenth day of suspension or expulsion. Student's Complaint did not seek an expedited hearing.

On May 21, 2013, OAH issued a Scheduling Order Notice of Dual Hearing Dates Including Expedited Hearing, Prehearing and Mediation, setting the hearing of the expedited issues in Student's Complaint for mediation on June 4, 2013, a prehearing conference (PHC) on June 12, 2013, and hearing on June 18-20, 2013.

On May 22, 2013, District filed a Request for Reconsideration or Clarification of OAH's Scheduling Order (herein treated as a Motion to Unexpedite) requesting that OAH remove from the calendar for this matter the dates for the mediation, prehearing conference, and hearing of expedited issues. The Motion to Unexpedite, which was not supported by declarations, was made on grounds that Student's expulsion hearing was held on May 21, 2013, and Student was not expelled.

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).) A "change of placement" is a fundamental change in, or elimination of, a basic element of a pupil's educational program, including removal from the current program for more than 10 consecutive school days, or a series of removals that cumulate to more than 10 consecutive school days and constitute a pattern based on listed factors. (34 C.F.R. § 300.536(a).)

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 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.

Here, Student's Complaint clearly asserts at page 10, line 17, an issue alleging that District denied Student's right to a manifestation determination meeting following ten days suspension or expulsion. This issue is subject to an expedited hearing, and Student has not withdrawn the issue. There are no grounds for removing the expedited dates from the calendar for this matter.

ORDER

1. District's motion to unexpedite the dates for the mediation, PHC and hearing of the expedited issues in Student's Complaint is denied.

2. The expedited issues shall proceed as currently scheduled: PHC on June 12, 2013, and hearing on June 18 - 20, 2013. No continuances can be granted.

Dated: June 4, 2013

/s/
ROBERT MARTIN
Administrative Law Judge
Office of Administrative Hearings