BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. DAVIS JOINT UNIFIED SCHOOL DISTRICT.	OAH Case No. 2015020031 ORDER DENYING MOTION TO UNEXPEDITE HEARING

On January 30, 2015, Student filed a Due Process Hearing Request (complaint) against District. The complaint alleged that District had repeatedly removed Student from her educational placement due to her behaviors, without proper notice; that District had failed to provide clear information about the number of times Student had been removed from the classroom during the 2013-14 and 2014-15 school years; and that Student has had manifestation determination meetings resulting in no appropriate or effective services. Student stated four issues in the complaint, including Issue Two alleging that Student's behavior plan was not appropriate. Issue Two re-stated the allegation that although manifestation meetings have been held determining Student's behaviors to be a manifestation of her disability, no appropriate changes to her educational program were then made, and she has been repeatedly removed from class.

On February 3, 2015, the Office of Administrative Hearings issued a Scheduling Order and Notice of Expedited and Non-Expedited Due Process Hearing and Mediation (Scheduling Order).

On February 4, 2015, District filed a motion to unexpedite this matter and vacate the expedited dates. District argues that no expedited issues were alleged in the complaint, such that an expedited hearing is not required. Specifically, District contends that the complaint does not challenge any decision by District regarding a change in educational placement, or a disagreement with a manifestation determination made by the district, because the manifestation meetings at issue did determine Student's conduct to be a manifestation of her disability.

OAH has received no response from Student. Nevertheless, as explained below, the motion is denied. All dates, both expedited and non-expedited, will remain on calendar as set forth in the Scheduling Order.

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

Student's facts as stated in the complaint relate to changes in her educational placement, and to disagreements with the decisions made at manifestation determination meetings, notwithstanding that those meetings may have determined Student's conduct to be a manifestation of her disability. Once these issues are raised, the expedited hearing time frame applies. Accordingly, the motion to unexpedite the hearing dates must be denied. Accordingly, the expedited hearing dates will not be vacated.

ORDER

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

2. The hearing shall proceed as scheduled.

DATE: February 9, 2015

/s/
JUNE R. LEHRMAN
Administrative Law Judge
Office of Administrative Hearings