BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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| In the Matter of:<br><br>PARENT ON BEHALF OF STUDENT,<br><br>v.<br><br>SAN DIEGO UNIFIED SCHOOL DISTRICT. | OAH Case No. 2015080908<br><br>ORDER GRANTING MOTION TO UNEXPEDITE HEARING |

On August 19, 2015, Student filed a Due Process Hearing Request (complaint) against San Diego Unified School District. On August 26, 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 matter for prehearing conference on September 11, 2015, and hearing on September 15 – 17, 2015.

On September 9, 2015, the parties filed a joint motion to unexpedite this matter and vacate the expedited dates, as they have agreed to the dismissal without prejudice of the expedited issue for 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

Student's complaint contains two issues for hearing. Issue 1 concerns District's purported failure to assess Student for possible special education eligibility during the 2014-2015 school year, which included allegations that District suspended Student for more than 10 school days. If District had a basis of knowledge that Student was a child who might be eligible for special education services, District was required to convene a manifestation determination meeting to evaluate if Student's disciplinary conduct was a manifestation of his disability. The request for dismissal without prejudice means that Student's contention in Issue 1 regarding the suspensions in excess of 10 school days is dismissed, but can proceed as to the non-expedited contentions in Issue 1. Accordingly, the expedited prehearing conference and hearing dates will be vacated.

## ORDER

1. The motion to unexpedite this matter is granted.

2. The expedited dates are vacated.

3. This matter shall proceed on the non-expedited dates.

DATE: September 9, 2015

**/s/**

PETER PAUL CASTILLO
Presiding Administrative Law Judge
Office of Administrative Hearings