BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH CASE NO. 2010110296
v.	ORDER GRANTING DISTRICT'S MOTION TO VACATE EXPEDITED SCHEDULING ORDER
RIALTO UNIFIED SCHOOL DISTRICT.	

On November 1, 2010, Student filed a due process hearing request that included the phrase "Petitioner requests an expedited hearing." The due process hearing request set forth a claim that Student was denied a FAPE because upon transferring to District, District committed various procedural and substantive violations of the IDEA that resulted in Student not having an appropriate program for the 2010-2011 school year. Although Student characterizes this situation as a "de facto expulsion" the complaint does not concern the imposition of school discipline for a violation of a student code of conduct.

On November 5, 2010, District filed an opposition to an expedited hearing on the ground that expedited hearing scheduling only applies to issues of school discipline. On November 8, 2010, OAH issued a scheduling order that used an expedited schedule that would apply to a school discipline case. On November 9, 2010, Student filed a statement of non-opposition. As discussed below, District is correct that expedited scheduling does not apply to a complaint that does not raise school discipline issues. Accordingly, the November 8, 2010 scheduling order will be vacated and replaced by a new scheduling order that applies the hearing deadlines applicable to matters that do not involve school discipline.

As part of the IDEA procedural protections related to imposition of school discipline, a student may request an expedited due process hearing on the issues of change of placement or disagreement with a manifestation determination. (20 U.S.C. § 1415(k)(3)(A), (k)(4)(B); 34 C.F.R. 300.532(c).) There is no provision for expedited hearings that merely challenge whether a district provided a particular eligible child with a FAPE. Accordingly, Student is not entitled to an expedited hearing.

The November 8, 2010 OAH scheduling order is vacated. A new, non-expedited scheduling order will be issued by OAH in conjunction with this Order based on the filing date of November 1, 2010.

IT IS SO ORDERED

Dated: November 9, 2010

/s/

RICHARD T. BREEN
Administrative Law Judge
Office of Administrative Hearings