BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS OF:

PARENT ON BEHALF OF STUDENT,

v.

BAKERSFIELD CITY SCHOOL DISTRICT,

OAH CASE NUMBER 2019120777

and

BAKERSFIELD CITY SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT,

OAH CASE NUMBER 2020010042

ORDER GRANTING STUDENT'S SECOND MOTION TO AMEND COMPLAINT

FEBRUARY 12, 2020

On December 18, 2019, Parent on behalf of Student filed a Due Process Hearing Request, referred to as a complaint, with the Office of Administrative Hearings case number 2019120777, First Case, naming Bakersfield City School District. First Case contains expedited and non-expedited issues, and was set for expedited and non-expedited hearings. The Office of Administrative Hearings is referred to as OAH.

On December 31, 2019, Bakersfield City filed a request for due process hearing in OAH case number 2020010042, naming Student. The sole, non-expedited issue is whether Bakersfield's assessments of Student in November 2019 were appropriate.

On December 31, 2019, Bakersfield City filed a motion to consolidate First Case with Second Case. On January 8, 2020, OAH granted Bakersfield City's motion to consolidate.

On February 3, 2020, Student filed a motion to amend and amended complaint. Bakersfield City did not oppose the motion. OAH granted leave for Student to file the amended complaint on February 3, 2020. The amended complaint raised issues that required an expedited hearing under title 20 United States code section 1415(k). Therefore, on February 3, 2020, OAH issued a dual scheduling order with new dates for expedited and non-expedited hearings for the consolidated matter.

On February 10, 2020, OAH held the prehearing conference for the expedited hearing in this matter, and confirmed the expedited hearing for February 19 through February 20, 2020. On February 10, 2020, prior to the prehearing conference, Student filed a motion to unexpedite the hearing and reframe the issues in its complaint. OAH denied the motion on the record at the prehearing conference because the motion was based on facts which were not alleged in the complaint. Further, the relief sought in the complaint included relief applicable to an expedited proceeding.

On February 11, 2020, Student filed a motion to amend and second amended request for due process. On February 11, 2020, Bakersfield City filed a statement of non-opposition to Student's motion to amend and second amended request for due process. The motion to amend and proposed second amended complaint expressly withdraws the issues in the complaint that triggered the expedited hearing.

On February 10, 2020, Bakersfield City filed a request for leave to amend its due process complaint in the consolidated matter. OAH granted Bakersfield City's request for leave to amend at the prehearing conference held on February 10, 2020, and further ordered that Bakersfield City's case shall be the primary matter.

APPLICABLE LAW:

A parent of a child with a disability who disagrees with any decision by a school district regarding the change in educational placement of the child based upon 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).) 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.*) A matter can only be unexpedited or continued if no issue is alleged that is subject to an expedited hearing, if the student withdraws the issues in the complaint that triggered the expedited hearing, or if the student elects to challenge the change of placement under title 20, section 1414, subdivision (b)(6)(A) and not subdivision (k). (*Molina v. Bd. of Educ. of Los Lunas Schools* (D.N.M. 2016) 157 F.Supp.3d 1064, 1068-1071.)

An amended complaint may be filed when the other party consents in writing and is given the opportunity to resolve the complaint through a resolution session, or when the hearing officer grants permission. The hearing officer may grant permission at any time more than five days before the due process hearing. (20 U.S.C. §1415(c)(2)(E)(i).) The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. §1415(c)(2)(E)(ii).)

DISCUSSION:

Student's second amended complaint attempts to withdraw all facts and issues that would necessitate an expedited hearing. However, Student alleges in Issue B, paragraph 54 that it was improper for Bakersfield City to determine that Student's disciplinary conduct was not a manifestation of his disability, and Student's suspensions removed from the school records. The requested relief in Paragraph 85, subparagraphs b and d, follows from the allegations in Issue B. Therefore, the mandatory provisions of Section 1415(k)(4)(B) for an expedited hearing apply. Accordingly, new expedited hearing dates will be set.

Further, Student's motion to amend and second amended complaint was filed more than five days prior to the expedited due process hearing scheduled for February 19 through February 20, 2020. Therefore, it is timely and is granted.

ORDER:

1. Student's second amended complaint shall be deemed filed on the date of this order. All applicable timelines shall be reset as of the date of this order.

2. Student's second amended complaint alleges expedited issues or requests for relief. Accordingly, the expedited due process hearing dates shall be reset.

3. This consolidated case shall proceed as an expedited and unexpedited matter, with Student's case being the primary matter. OAH will issue a scheduling order with new dates.

IT IS SO ORDERED

DocuSigned by:
Jennifer Kelly
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Jennifer Kelly
Administrative Law Judge
Office of Administrative Hearings