BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

FRANKLIN-MCKINLEY SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NUMBER 2023010468

ORDER FOLLOWING PREHEARING CONFERENCE VACATING NON-EXPEDITED HEARING DATES; AND DENYING REQUEST FOR CONTINUANCE

FEBRUARY 6, 2023

On February 6, 2023, Administrative Law Judge Alexa Hohensee, Office of Administrative Hearings held a telephonic prehearing conference. The Administrative Law Judge will be referred to as an ALJ. The prehearing conference will be referred to as a PHC. The Office of Administrative Hearings will be referred to as OAH.

Attorney Carlos Gonzalez appeared on behalf of Franklin-McKinley School District. Student's mother and father, called Parents, appeared on behalf of Student. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

FRANKLIN-MCKINLEY'S WITHDRAWAL OF NON-EXPEDITED CLAIM

Franklin-McKinley moved to withdraw from its due process hearing request, called a complaint, the one non-expedited claim. In the complaint, Issue 3 seeks authorization to conduct a functional behavior assessment, which is a non-expedited claim. A party may withdraw claims prior to the due process hearing, and Franklin-McKinley's motion is granted.

Only Franklin-McKinley's expedited claims, Issues 1 and 2 of the complaint, will proceed to due process in the expedited hearing scheduled to begin on February 7, 2023. The dates for the non-expedited due process hearing on the non-expedited issue, February 14, through 16, 2023, are vacated.

PARENTS' MOTION TO CONTINUE

Student's father moved for a continuance of the expedited due process hearing scheduled to begin February 7, 2023, because he had not had sufficient time to coordinate with Student's mother and obtain counsel. Student's mother joined in the motion.

A due process hearing on an expedited claim must occur within 20 school days of the date the hearing is requested. (20 U.S.C. § 1415(k)(4)(B).) Franklin-McKinley filed its complaint on January 18, 2023. The proof of service indicates that on January 18, 2023, Franklin-McKinley served the complaint on each parent, by overnight delivery and email at different addresses. Accordingly, Parent's received notice of the complaint on January 18, 2023.

OAH served a scheduling order with the dates of the expedited hearing on Parents by overnight mail and U.S. Mail on January 20, 2023. On January 30, 2023,

Parents attended the expedited prehearing conference, and were informed that the expedited due process hearing was scheduled to begin on February 7, 2023. Parents and counsel for Franklin-McKinley were ordered to meet and confer no later than February 1, 2023. Parents have had more than two weeks' notice of the complaint and expedited hearing to coordinate between themselves or obtain counsel for the expedited proceeding. There was no evidence that Parents had made significant attempts to obtain counsel, or anticipated engaging counsel who would be ready to proceed to hearing on February 7, 2023.

Accordingly, the motion to continue is denied. Parents also contend that the proof of service on the complaint is inaccurate, and that they did not receive the notice stated. Franklin-McKinley is ordered to produce documents to establish service of the complaint on each parent, and to have a witness testify as to service. Parents will also each be given an opportunity to testify under oath about when they received notice of the hearing.

IT IS SO ORDERED.

Alexa Hohensee

Alexa Hohensee
Administrative Law Judge
Office of Administrative Hearings