BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

BERKELEY UNIFIED SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NUMBER 2023100681

ORDER DENYING REQUEST FOR CONTINUANCE OF AN EXPEDITED HEARING

OCTOBER 31, 2023

On October 20, 2023, Berkeley Unified School District, called Berkeley, filed a Due Process Hearing Request, known as a complaint, against Student requesting a hearing based on both expedited and un-expedited claims. On October 24, 2023, based on issues asserted in the complaint, the Office of Administrative Hearings, referred to as OAH, issued a Scheduling Order and Notice of Expedited and Non-Expedited Due Process Hearing and Mediation, called a Scheduling Order. The Scheduling Order set this matter for expedited mediation on November 2, 2023, expedited prehearing conference on November 3, 2023, at 1:00 PM, non-expedited prehearing conference on November 6, 2023, at 1:00 PM, and expedited and non-expedited hearings for November 14, 15, and 16, 2023.

On October 27, 2023, Student requested a continuance of the expedited mediation and the hearing dates. Student proposed new dates stating that he needed more time to prepare for hearing, seek attorney representation, and represented that Berkeley did not provide a time-stamped proof of service of the complaint. On October 27, 2023, Berkeley filed a response, with a declaration under the penalty of perjury from a paralegal, that it sent the complaint to parent's email where Berkeley had previously communicated with parent, and by regular mail to Student's address.

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). All subsequent references to the Code of Federal Regulations are to the 2006 version.) 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 un-expedited 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 1415, 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.)

A due process hearing must be conducted, and a decision rendered within 45 days of receipt of the complaint unless an extension is granted. (34 C.F.R.

§ 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Speedy resolution of the due process hearing is mandated by law and continuance of the hearing may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f)(3).) In ruling upon a motion for continuance, OAH is guided by the provisions found within the Administrative Procedure Act and the California Rules of Court that concern motions to continue. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, 3.1332.) Generally, continuances of matters are disfavored. (Cal. Rules of Court, 3.1332(c).)

Berkeley seeks OAH determination of the following expedited issue in Issue 1 of its complaint:

- Does Student's behavior pose a significant risk of injury to himself or others such that the Berkeley can remove Student to an Interim Alternative Educational Setting for not more than forty-five school days pursuant to 34 Code of Federal Regulations, section 300.532(b)(2)(ii)?

As a resolution for the expedited issue, Berkeley seeks to place Student at Rising Star Sped Academy for not more than forty-five school days.

Student seeks a hearing continuance. However, the expedited hearing dates cannot be continued because the expedited issue and resolution raised in the complaint, and summarized above, is subject to an expedited time frame. Once Berkeley raised the issue of Student's behavior posing a significant risk of injury to himself or others and the need for an Interim Alternative Educational Setting, the expedited hearing time frame applies. Accordingly, Student's request to continue the expedited mediation, prehearing conference, and hearing dates must be denied.

However, Student's request for a continuance of the non-expedited prehearing conference and hearing dates is under consideration and shall be discussed at the November 3, 2023, 1:00 PM PHC. The parties shall meet and confer regarding the non-expedited prehearing conference and hearing dates before November 3, 2023, and be prepared for discussion with the ALJ at the November 3, 2023, 1:00 PM prehearing conference.

ORDER

1. The motion to continue the expedited mediation, prehearing conference and hearing dates is denied.
2. The expedited mediation, prehearing conference, and hearing dates shall proceed on Berkeley's Issue 1, as scheduled:
    a. Expedited Mediation: November 2, 2023, at 9:00 AM by videoconference;
    b. Expedited Prehearing Conference: November 3, 2023, at 1:00 PM by videoconference; and
    c. Expedited Hearing: November 14, 15, and 16, 2023, at 9:30 AM by videoconference.
3. The parties are ordered to meet and confer regarding the non-expedited prehearing conference and hearing dates before November 3, 2023, and be prepared to discuss dates with the ALJ at the 1:00 PM, November 3, 2023, prehearing conference.

IT IS SO ORDERED.

Sabrina Kong

Sabrina Kong

Administrative Law Judge

Office of Administrative Hearings