BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: OAKLAND UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017030950
PARENT ON BEHALF OF STUDENT, v. OAKLAND UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017050146 ORDER DENYING REQUEST FOR CONTINUANCE OF EXPEDITED HEARING

On June 26, 2017, Student filed with the Office of Administrative Hearings a request to continue the expedited hearing dates in this matter based on the unavailability of Student's counsel due to a conflicting special education hearing, prejudice to Student should the matter proceed on an expedited basis, and because an expedited timeline would preclude Student's experts from conducting a classroom observation prior to hearing. On June 28, 2017, Oakland Unified School District opposed the request asserting it had a right to proceed to hearing on an expedited basis to address the issue of whether Student's behaviors are likely to result in injury to herself or to others such that Oakland may remove Student to an interim alternative educational setting. Oakland further argues that Student has not established good cause for a continuance. On June 29, 2017, Student filed a reply.

On June 30, 2017, OAH ordered the parties to submit supplemental briefing on the issue of whether Oakland offers a 2017 summer school program for the school population at large. On July 5, 2017, both parties filed supplemental declarations in accordance with the June 30, 2017 Order.

A school district that believes that maintaining a child in her current placement is substantially likely to result in injury to the child or others, has the right to request and receive an expedited due process hearing. (20 U.S.C. § 1415(k)(3)(A); 34 C.F.R. § 300.532(a) (2006).) If it is determined that maintaining the current placement of the student is substantially likely to result in injury to the student or to others, the administrative

law judge may order a change in placement to an appropriate interim alternative educational setting for not more than 45 school days. (20 U.S.C. § 1415(k)(3)(B)(ii)(II); 34 C.F.R. § 300.532(b)(2)(ii).) 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).)

A "school day" is any day or partial day that children are in attendance at school for instructional purposes. (34 C.F.R. § 300.11(c)(1).) Educational agencies must count summer school days when complying with the 20-day timeline for arranging expedited hearings if the summer program is open to all students. (See *Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46540, 46552 (Aug. 14, 2006); *Letter to Cox* (OSEP 2012) 59 IDELR 140.)

In light of the strict time requirements for expedited hearings, continuances are disfavored and rarely entertained. Good cause may include the unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances; substitution of an attorney when the substitution is required in the interests of justice; a party's excused inability to obtain essential testimony or other material evidence despite diligent efforts; or another significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. (See Cal. Rules of Court, rule 3.1332(c).) OAH considers all relevant facts and circumstances, including the proximity of the hearing date; previous continuances or delays; the length of continuance requested; the availability of other means to address the problem giving rise to the request; prejudice to a party or witness as a result of a continuance; the impact of granting a continuance on other pending hearings; whether trial counsel is engaged in another trial; whether the parties have stipulated to a continuance; whether the interests of justice are served by the continuance; and any other relevant fact or circumstance. (See Cal. Rules of Court, rule 3.1332(d).)

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. Oakland's request to file an amended complaint which included an expedited issue was granted and its amended complaint was deemed filed on June 23, 2017. The expedited portion of this matter must be heard within 20 school days.

Student contends that the first school day that counts towards calculating the expedited hearing timeline is August 21, 2017, the first day of the 2017-2018 school year. However, the sworn declaration of Oakland's Director of Legal Support Services for Special Education establishes that Oakland runs a 2017summer school program that consists of instructional days for the general school population. This summer school program runs from June 19, 2017, through July 21, 2017. Student's argument that the summer school program is only open to eleventh and twelve graders for the purpose of credit recovery is refuted by Oakland's supplemental declaration and attached summer school program. Oakland established that it provides academic intervention and learning programs for students at all grade levels for four and five week programs during the 2017 summer session. These days count as school days. Granting Student's request for a continuance to September 12, 2017,

the hearing date scheduled for the non-expedited issues, would run afoul of the mandate that an expedited hearing occur within 20 school days of the filing of the expedited complaint.

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. The request is:

☒ Denied. All expedited prehearing conference and hearing dates are confirmed and shall proceed as calendared.[1]

IT IS SO ORDERED.

DATE: July 6, 2017

DocuSigned by:
Theresa Ravandi
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THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings

[1] Student's counsel asserts that she is scheduled for another OAH hearing (OAH Case No. 2017050244) that is due to start prior to this matter and is scheduled to continue on the dates scheduled for the instant expedited matter. Student's counsel should alert all parties in OAH Case No. 2017050244 and the assigned ALJ of this order.