BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

CAPISTRANO UNIFIED SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NUMBER 2024030280

ORDER DENYING MOTION TO UNEXPEDITE HEARING

MARCH 20, 2024

On March 7, 2024, Capistrano Unified School District filed a Due Process Hearing Request, known as a complaint, against Student. On March 8, 2024, based on issues asserted in the complaint, the Office of Administrative Hearings, referred to as OAH, issued a Scheduling Order Setting Dual Hearing Dates, Prehearing Conference and Mediation. The Scheduling Order set this matter for expedited mediation on March 19, 2024, expedited prehearing conference on March 18, 2024, and expedited hearing for March 25 through March 27, 2024. The non-expedited hearing dates were scheduled for the first week of April 2024.

On March 19, 2024, Student filed a document entitled Stipulation Regarding Issues for Expedited Due Process Hearing, signed only by Student's counsel. In the document, Student offers certain stipulations and requests that OAH vacate the

expedited hearing dates. OAH interprets this document as a motion to unexpedite the expedited portion of this matter and vacate the expedited dates.

APPLICABLE LAW

Title 20 United States Code section 1415(k), and title 34 Code of Federal Regulations part 300.530, et seq., govern the discipline of special education students. (Ed. Code, § 48915.5.) A student receiving special education services may be suspended or expelled from school as provided by federal law. (20 U.S.C. § 1412(a)(1)(A); Ed. Code, § 48915.5, subd. (a).) If a special education student violates a code of student conduct, school personnel may remove the student from his or her educational placement without providing services for a period not to exceed 10 days per school year, provided typical children are not provided services during disciplinary removal. (20 U.S.C. § 1415(k)(1)(B); 34 C.F.R. § 300.530(b)(1) & (d)(3).)

The law also provides that school personnel may remove a student to an interim alternative educational setting for not more than 45 school days, regardless of whether the student's behavior is determined to be a manifestation of the student's disability, under certain circumstances. (20 U.S.C. § 1415(k)(1)(G); 34 C.F.R. § 300.530(g).)

A school district may request a due process hearing to authorize a change of placement if the district "believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others." (20 U.S.C. § 1415(k)(3)(A); 34 C.F.R. § 300.532(a).) This issue requires an expedited hearing that must be conducted within 20 school days of the date an expedited due process hearing request is filed and a decision must be rendered within 10 school days after the hearing ends. (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 the law does not authorize OAH to make exceptions or grant continuances of expedited matters. (*Ibid.*)

If the administrative law judge, or ALJ, deciding the case determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, the ALJ may order a change in placement of a child with a disability 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).) The interim alternative educational setting must enable the child to continue to participate in the general education curriculum and to progress toward meeting the goals set out in the child's individualized education program, or IEP. (20 U.S.C. § 1415(k)(1)(D)(i); 34 C.F.R. § 300.530(d).) The interim alternative educational setting must also enable the child to receive, as appropriate, a functional behavioral assessment, behavioral intervention services, and modifications that are designed to address the behavior violation so that it does not recur. (34 C.F.R. § 300.530(d)(1)(ii).

These due process procedures may be repeated after the initial 45 school days if the district "believes that returning the child to the original placement is substantially likely to result in injury to the child or to others." (34 C.F.R. § 300.532(b)(3).)

DISCUSSION

A matter set for an expedited hearing can only be unexpedited if no issue is alleged that is subject to an expedited hearing, or if the filing party withdraws the issues in the complaint that triggered the expedited hearing. (See 20 U.S.C. § 1415(k)(4)(B); 34 C.F.R. § 300.532(c)(2).)

Capistrano District specifically requested an expedited hearing for a determination of whether maintaining Student's current educational placement is

substantially likely to result in injury to Student or to others, such that Capistrano District can remove Student to an interim alternative educational setting of in-home instruction for not more than 45 school days. As part of the expedited hearing, Capistrano District seeks an order allowing it to remove Student to an interim alternative educational setting of in-home instruction as set out in the March 7, 2024, IEP for not more than 45 days, among other things.

Here, Capistrano District's complaint alleges expedited issues and remedies requiring an expedited hearing pursuant to title 20 United States Code section 1415(k), and title 34 Code of Federal Regulations part 300.530, et seq. Capistrano District has not withdrawn or dismissed the issue or remedies in the complaint that triggered the expedited hearing scheduled to begin on March 26, 2024.

Student has failed to demonstrate that circumstances have changed, so that an expedited evidentiary hearing is no longer required. Student cites no authority that allows OAH to take an expedited hearing off calendar based on the vague, conclusory, and incomplete "stipulation" offered by Student. (See 20 U.S.C. § 1415(k)(3)(B)(i)["A hearing officer shall hear, and make a determination regarding, an appeal requested under subparagraph (A)."]; Cf., *N.R. v. Del Mar Unified School District* (S.D.Cal. 2023) 2023 WL 8532395, at *3 [no rule, statute, or case law is cited absolving the ALJ of rendering a decision on the merits.)

As an initial matter, Student's stipulation does not address or dispose of all the factual findings and legal conclusions OAH is required to make as part of the expedited hearing. It does not fully address the expedited issue for hearing, or the remedies sought by Capistrano District. Among other things, Student has not stipulated as to what constitutes Student's current placement, and merely states that Student stipulates that Capistrano District may change Student's placement to "an appropriate" interim

alternative educational setting. Student has not stipulated to OAH issuing any order, much less an order that the setting requested by Capistrano District is an appropriate interim alternative educational setting, or that Capistrano District can remove Student to that specific setting. Student has not stipulated to OAH entering an order that the interim alternative educational setting sought by Capistrano District enables Student to continue to participate in the general education curriculum and to progress toward meeting his IEP goals, or addressed whether such setting will also enable Student to receive, as appropriate, a functional behavioral assessment and other services designed to address the behavior violation so that it does not recur. Nor has Student stipulated to OAH issuing an order for the other relief sought by Capistrano District as part of the expedited hearing. Accordingly, the motion to unexpedite the hearing dates is denied.

If the parties seek to stipulate to pertinent facts, contentions, and resolutions, they shall put the stipulation in writing, have it signed by both parties, and file it with OAH prior to the hearing. The stipulation should be specific.

ORDER

1. Student's motion to unexpedite the hearing dates is denied.
2. The expedited hearing shall proceed as scheduled as set forth in the Prehearing Conference Order dated March 18, 2024.

IT IS SO ORDERED.

Laurie Gorsline

Laurie Gorsline

Administrative Law Judge

Office of Administrative Hearings