

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PALOS VERDES PENINSULA UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2014051221

ORDER FOLLOWING PREHEARING
CONFERENCE – EXPEDITED
HEARING: DISMISSING EXPEDITED
AND NON-JURISDICTIONAL
CLAIMS; GRANTING JOINT
REQUEST FOR CONTINUANCE AND
SETTING MEDIATION, PREHEARING
CONFERENCE AND DUE PROCESS
HEARING

On July 14, 2014, Administrative Law Judge (ALJ) Adrienne L. Krikorian, Office of Administrative Hearings (OAH) held a telephonic prehearing conference (PHC) on the expedited issues in Student's complaint. Attorneys Kanado Blondet and Tania Whiteleather appeared on Student's behalf. Attorney Jabari Willis appeared on behalf of Palos Verdes Peninsula Unified School District (District.) The PHC was recorded.

Based on discussion of the parties, the ALJ issues the following order:

1. Dismissal of Expedited Issues and Claims Outside OAH Jurisdiction.

a. Dismissal of claims for remedies under Title 20 United States Code section 1415(k).

Student's complaint identified two issues, specified as Issues 1 and 3, that alleged procedural violations that fall under Title 20 United States Code section 1415(k), and specifically that 1) District did not afford Student's parents an opportunity to meaningfully participate in a March 4, 2014 Manifestation Review meeting, and 2) District removed Student from school during the 2013-2014 school year for more than 10 days. Student's complaint did not allege any resolutions that would have arisen from an expedited hearing on section 1415(k) claims.

Student expressly withdrew any claims in the complaint that would give rise to an expedited due process hearing as required by 20 United States Code section 1415(k)(4)(B), or seek any remedies available under Title 20 United States Code section 1415(k), including an order that District hold a manifestation review meeting, overturning the results of the March 4, 2014 Manifestation Review, or returning Student to her then current placement.

The parties stipulated that, notwithstanding the above, Student may raise any and all claims alleged in the complaint relating to Title 20 United States Code section 1415(k) for the purpose of establishing a denial of a free appropriate public education (FAPE) under the Individuals with Disabilities Education Act and the resolutions that would result from a denial of a FAPE.

Accordingly, Student's claims for remedies under Title 20 United States Code section 1415(k) are dismissed. Student preserves the right to allege procedural violations of section 1415(k) that may give rise to a denial of FAPE and its corresponding remedies. The matter will proceed to hearing on the non-expedited issues, only.

b. Dismissal of Claims Outside OAH Jurisdiction.

Student's complaint, and specifically Issues 4 and 6, raise claims that allege retaliation against Student's parents, and that arise out of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.) (Section 504), the civil rights act under 42 U.S.C. 1983 (Section 1983), or other related state and federal civil rights laws.

OAH does not have jurisdiction to entertain claims based on Section 504, Section 1983, or other related state and federal civil rights laws. The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education" (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving a proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

Student agreed to withdraw Issues 4 and 6 as outside of OAH jurisdiction. Accordingly, Issues 4 and 6 are dismissed. The matter shall proceed to hearing on Issues 1, 2, 3 and 5, as those claims pertain to a denial of FAPE.

2. Student's Motion to Continue.

On July 10, 2014, Student filed a motion to continue the hearing dates in this matter. District represented during the PHC that it did not oppose a continuance, but disagreed with the initial dates proposed by Student. After discussion with the ALJ, the parties agreed upon dates.

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice 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, rule 3.1332 .) Generally, continuances of matters are disfavored. (Cal. Rules of Court, rule 3.1332(c).)

The parties' request for continuance is granted upon a showing of good cause. All dates are vacated, and the matter will be set as follows:

Mediation:	July 24, 2014 at 9:30 a.m.
Prehearing Conference:	August 22, 2014 at 3:00 p.m.
Due Process Hearing:	September 2 and September 8, 2014 at 1:30 p.m., September 3, 4, 9 and 10, 2014 at 9:00 a.m. unless otherwise ordered, and continuing day to day Monday through Thursday as determined by the ALJ.

3. Prehearing Conference Statements. The parties have filed PHC statements and are therefore not required to file new statements unless circumstances change. All other matters will be discussed at the continued PHC.

IT IS SO ORDERED.

DATE: July 14, 2014

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings