

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023120395

ORDER FOLLOWING PREHEARING CONFERENCE AND
CONTINUING THE UN-EXPEDITED HEARING BY
VIDEOCONFERENCE; AND CLARIFICATION OF EXPEDITED
HEARING ISSUES

JANUARY 19, 2024

On January 19, 2024, Administrative Law Judge Sabrina Kong, Office of Administrative Hearings, held a prehearing conference by videoconference. The Administrative Law Judge is called an ALJ. The Office of Administrative Hearings is called OAH. The prehearing conference is called a PHC.

Attorney Rosa Hirji appeared on Student's behalf. Attorney Kristin Myers appeared on Santa Monica-Malibu Unified School District's, called Santa Monica-

Malibu, behalf. Based upon discussion with the parties, the ALJ issues the following order.

CONTINUANCE OF THE UN-EXPEDITED DUE PROCESS HEARING

On December 12, 2024, Student filed a due process complaint setting forth issues for both expedited and un-expedited hearings. The expedited hearing is currently proceeding on January 23, 24, and 25, 2024, and the parties estimated the expedited hearing is expected to complete in five days. The un-expedited hearing is currently scheduled to proceed on January 30, 31, and February 2, 2024, before the completion of the currently estimated five days for the expedited hearing.

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 for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances are disfavored. 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. (Ed. Code, § 56505, subd. (f)(3); 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 or imposing conditions on the continuance; and any other relevant fact or circumstance. (Cal. Rules of Court, rule 3.1332(d).)

Neither party requested a continuance of the un-expedited hearing. However, OAH finds good cause to continue the un-expedited hearing because the expedited hearing overlaps the currently scheduled first day of the un-expedited hearing. Attorney Hirji shared that Parent has medical issues and preferred the un-expedited hearing to proceed on the week of February 6, 2023. Because of OAH's schedule, which includes mandatory ALJ training, the un-expedited hearing may not proceed on the week of February 6, 2023. Attorney Hirji conferred with Parent, and proposed the un-expedited hearing proceed on the week of March 5, 2024, in lieu of an available date the week of February 27, 2024.

Attorney Myers represented that she has a hearing from an earlier filed case on the week of March 5, 2024, but does not object to the un-expedited hearing being continued that week to accommodate Parent's schedule.

The un-expedited PHC and hearing dates are continued as follows:

PHC, HEARING DATES, TIMES, AND LOCATION OF THE UN-EXPEDITED HEARING

The un-expedited PHC is continued to February 23, 2024, at 10:00 AM. All other prehearing matters will be discussed during the February 23, 2024 PHC.

The un-expedited hearing will take place on March 5, 6, and 7, 2024, and continue day to day at the discretion of the ALJ. The un-expedited hearing shall begin at 9:30 AM each day and generally end at 3:30 PM, unless otherwise ordered. PHC

statements and motions are due to OAH no later than three business days before the or with a showing of good cause why it was not timely filed.

PARTICIPANT INFORMATION SHEETS FOR THE PHC AND DUE PROCESS HEARING MUST BE FILED TWO BUSINESS DAYS PRIOR TO THE DATE OF THE SCHEDULED EVENT.

OAH is authorized to conduct due process hearings by videoconference or telephone. (Cal. Code Regs., tit. 5, § 3082, subd. (g).) OAH will conduct the due process hearing by videoconference using the Zoom application. Unless otherwise ordered, participants are required to appear by videoconference using computer or device with video capability and Zoom.

The parties shall immediately notify all potential witnesses of the hearing dates and shall subpoena witnesses, if necessary, to ensure that the witnesses will appear to testify. A party's failure to notify or subpoena a witness to testify will not be considered good cause to continue the hearing. Instructions for issuing and responding to [subpoenas](https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Forms/Subpoenas?search=special%20education%20subpoena) and optional forms for subpoenas can be found on the website at <https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Forms/Subpoenas?search=special%20education%20subpoena>.

EXPEDITED HEARING ISSUES DISCUSSED AND CLARIFIED AT THE JANUARY 19, 2024 PHC

Upon review of the January 12, 2024 expedited PHC, the undersigned ALJ invited clarification and discussion of the expedited issues from the parties. The issues stated in the January 12, 2024 Order Following PHC for Expedited Hearing are free appropriate public education violations and are not issues appropriate for an expedited hearing. Therefore, at the January 19, 2024 PHC, the ALJ had extensive discussions with the

parties and clarified the issues for the expedited hearing. The issues at the expedited due process hearing, as alleged in the complaint and clarified by the parties and the ALJ during the January 19, 2024 PHC are:

EXPEDITED HEARING ISSUES

1. Did Santa Monica-Malibu's May 19, 2023 manifestation determination that Student's conduct, which resulted in the May 15, 2023 suspension, did not have a direct and substantial relation to Student's disability, incorrect under title 20 United States Code section 1415(k)?
2. Did Santa Monica-Malibu fail to adequately review Student's file, teachers' observations, and relevant information provided by Parents at the May 19, 2023 manifestation determination review, in violation of title 20 United States Code section 1415(k)?
3. Did Santa Monica-Malibu fail to provide Parents notice of their parental rights and procedural safeguards in violation of title 20 United States Code section 1415(k)?
4. Did Santa Monica-Malibu fail to hold an IEP team meeting to determine appropriate services for Student during the May 15, 2023 suspension in violation of title 20 United States Code section 1415(k)?
5. Was Student's conduct, which resulted in the May 15, 2023 suspension, the direct result of Santa Monica-Malibu's failure to implement Student's February 3, 2023 IEP, amended on April 27, 2023, in violation of title 20 United States Code section 1415(k)?

A party must immediately file written objections with OAH and serve the filing on the opposing party if the above expedited issues do not reflect the party's understanding of the expedited issues clarified, and agreed to, at the January 19, 2024

PHC. The ALJ will address any written objections on the first day of the expedited hearing.

SETTLEMENT

The parties are encouraged to continue working together to reach an agreement before the due process hearing. The parties shall inform OAH in writing immediately if they reach a settlement or otherwise resolve the dispute before the scheduled hearing. In addition, if a settlement is reached within five days of the scheduled start of the due process hearing, the parties shall also inform OAH of the settlement by telephone at (916) 263-0880. At the same time, the parties should send the signature page of the signed agreement or a letter withdrawing the case to OAH by visiting [OAH Secure e-file](https://www.applications.dgs.ca.gov/oah/oahsftweb) at <https://www.applications.dgs.ca.gov/oah/oahsftweb>. Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received and processed by OAH.

If the matter settles subject to board approval, in addition to a signed copy of the signature page of the settlement agreement, the parties shall provide the date of the next board meeting. The hearing dates will not be cancelled without this information.

FAILURE TO COMPLY

The failure to comply with this Order may result in the exclusion of evidence or other sanctions.

ORDER INCLUDES ALL RULINGS

This Order includes all rulings made at the PHC.

FAILURE TO COMPLY

The failure to comply with this Order may result in the exclusion of evidence or other sanctions.

ORDER INCLUDES ALL RULINGS

This Order includes all rulings made at the prehearing conference. Any discussion and conversation not referenced in this Order is not binding on the ALJ conducting the hearing and may not be relied upon by the parties. The parties should be aware that, at hearing, the ALJ conducting the hearing has discretion to reconsider any part of this Order.

IT IS SO ORDERED

Sabrina Kong

Sabrina Kong

Administrative Law Judge

Office of Administrative Hearings