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 2025050659

ORDER DENYING STUDENT'S MOTION TO DISMISS; MOTION FOR SANCTIONS; AND MOTION TO UNEXPEDITE HEARING

MAY 29, 2025

On May 15, 2025, Berkeley Unified School District, called Berkeley Unified, filed a request for due process hearing, referred to as a complaint, with the Office of Administrative Hearings, naming Student. The Office of Administrative Hearings is referred to as OAH.

On May 16, 2025, OAH issued a scheduling order setting an expedited due process hearing and mediation. The expedited prehearing conference is scheduled for June 2, 2025, at 1:00 p.m., and the expedited due process hearing is scheduled for June 10 through 12, 2025.

On May 22, 2025, Student filed combined motions to dismiss the complaint, for sanctions, and to unexpedite the due process hearing. The motions were supported by a declaration under penalty of perjury by Student's attorney Jenny Chau. On May 27, 2025, Berkeley Unified filed an opposition to Student's motions.

OAH requires motions to be filed separately. Here, Student combined three separate motions. In the interest of judicial efficiency in this expedited matter, OAH will rule on Student's combined motion. However, Student's attorneys are instructed to file any future motions separately.

NO SUMMARY JUDGMENT IN SPECIAL EDUCATION DUE PROCESS MATTERS

The purpose of the Individuals with Disabilities Education Act, called 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," called 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 [FAPE] 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 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].) OAH's jurisdiction is limited to these matters. (*Wyner v. Manhattan Beach Unified School. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029 (*Wyner*).)

OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction such as civil rights claims under other disability laws such as the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, enforcement of settlement agreements, or incorrect parties. Special education law does not provide for a summary judgment procedure.

Berkeley Unified's complaint alleges Student's individualized education program, called IEP, placed him in Star View Adolescent Center, a residential treatment center in Torrance, California, following psychiatric symptoms, including paranoia, delusions, extreme religious perseveration, agitation, sleeplessness, and hallucinations. The complaint further alleges Parent sought to remove him from treatment, but agreed to allow Student to stay at a lower level of care in a community treatment facility. The complaint alleges Student's conditions worsened and he was placed back at Star View Adolescent Center. Berkeley Unified contends Parent removed Student from Star View Adolescent Center on May 7, 2025, against the advice of the treatment center's staff.

Parent subsequently requested home hospital instruction from Berkeley Unified. Berkeley Unified denied the request through a prior written notice dated May 14, 2025 because it did not believe that home hospital instruction was appropriate to meet Student's academic, behavioral, and psychiatric needs.

Berkeley Unified's due process complaint alleges Student's behavior poses a significant risk of injury to self and others. Berkeley Unified seeks an order from OAH allowing it to place Student in Star View Adolescent Center as an interim alternative educational setting for not more than 45-days.

Student's motion to dismiss challenges the appropriateness of Student's placement offers in IEPs dated January 7, 2025, January 23, 2025, February 21, 2025,

March 10, 2025, April 10, 2025, April 30, 2025, and May 8, 2025. Parent argues that OAH lacks jurisdiction to order Student's removal to a hospital for medical reasons. Parent also disputes that Star View Adolescent Center is an appropriate interim alternative educational setting for Student, or that maintaining Student's current placement is substantially likely to result in injury to Student or others.

Student's motion to dismiss is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits. Specifically, Student seeks findings that Berkeley Unified's placement offers were inappropriate and denied him a FAPE. Student further argues OAH lacks jurisdiction to order placement in Star View Adolescent Center. These determinations involve mixed questions of fact and law, and must be determined following an evidentiary hearing. Student may raise these issues as affirmative defenses at the expedited due process hearing. However, summary adjudication of these issues is not appropriate. Accordingly, Student's motion to dismiss is denied.

SANCTIONS AGAINST BERKELEY UNIFIED AND ITS ATTORNEYS ARE NOT WARRANTED

Student contends that Berkeley Unified and its attorneys did not have a reasonable basis to believe that allowing Student to remain at home could likely lead to injury to himself or others. Student contends Berkeley Unified filed the expedited due process complaint for the sole purpose of harassing Parent and Student and to force him into a medical facility. Student seeks an award of attorney's fees incurred in filing the motion to dismiss. Student's motion for sanctions does not describe the amount of fees he seeks, nor is it supported by a declaration under penalty of perjury establishing the fees incurred or copies of invoices.

Berkeley Unified argues that it filed the due process hearing request for the purpose of ensuring Student receives a FAPE reasonably calculated to allow him to make progress in light of his circumstances. Berkeley Unified disputes that its actions were made in bad faith.

In certain circumstances, an administrative law judge, known as the ALJ, presiding over a special education proceeding is authorized to shift expenses from one party to another, or to OAH. (Gov. Code, §§ 11405.80, 11455.30; Cal. Code. Regs., tit. 5, § 3088; see *Wyner, supra,* 223 F.3d 1026, 1029 ["Clearly, [California Code of Regulations] § 3088 allows a hearing officer to control the proceedings, similar to a trial judge."].) Expenses may be ordered to be reimbursed either to OAH or to another party. With approval from the General Counsel of the California Department of Education, the ALJ presiding over the hearing may "order a party, the party's attorney or other authorized representative, or both, to pay reasonable expenses, including costs of personnel" to OAH (as the entity that is responsible for conducting due process hearings) as a result of bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay." (Cal. Code. Regs., tit. 5, § 3088, subds. (a) & (e); see Gov. Code, § 11455.30, subd. (a).) An ALJ presiding over a hearing may, without first obtaining approval from the California Department of Education, "order a party, the party's attorney or other authorized representative, or both, to pay reasonable expenses, including attorney's fees, incurred by another party as a result of bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay." (Gov. Code, § 11455.30, subd. (a); Cal. Code. Regs., tit. 5, § 3088, subd. (a).)

"Actions or tactics" is defined as including, but not limited to, making or opposing motions or filing and serving a complaint. (Gov. Code, §11455.30, subd. (a); Code Civ. Proc., § 128.5, subd. (b)(1).) "Frivolous" means totally and completely without

merit or for the sole purpose of harassing an opposing party. (Gov. Code, § 11455.30, subd. (a); Code Civ. Proc., § 128.5, subd. (b)(2).) A finding of "bad faith" does not require a determination of evil motive, and subjective bad faith may be inferred. (*West Coast Development v. Reed* (1992) 2 Cal.App.4th 693, 702.)

Only the ALJ presiding at the hearing may place expenses at issue. (Cal. Code. Regs., tit. 5, § 3088, subd. (b).) Student's motion for sanctions is inappropriate at this stage of the proceeding. Further, Student has not established any facts that justify an order of sanctions against Berkeley Unified or its attorneys for acting in bad faith, as alleged. Accordingly, Student's motion for sanction is denied.

THE DUE PROCESS HEARING SHALL PROCEED ON AN EXPEDITED BASIS

Student argues that the due process hearing should be unexpedited. However, Student fails to cite facts or law establishing a basis for unexpediting this matter.

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) (2006).) A hearing officer is responsible for deciding an appeal of a change of placement. (34 C.F.R. § 300.532(b) (2006).) In making the determination, the hearing officer may:

1. return the child with disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of section 300.530, or that the child's behavior was a manifestation of child's disability; or
2. order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45

school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or others. (*Id.* at subd. (b)(1)-(2).)

Whenever an expedited hearing is requested under section 300.532, subparagraph (a), the parents or local educational agency involved in the dispute must have an opportunity for an impartial due process hearing. (*Id.* at subd. (c)(1).) The expedited due process hearing must occur within 20 school days of the date the complaint requesting the hearing is filed. (*Id.* at subd. (d)(2).)

OAH reviews complaints to determine if the issues require an expedited hearing. District filed cases seeking a 45-day interim alternative educational setting require an expedited hearing. In this case, Berkeley Unified's complaint seeks to place Student in an interim alternative educational setting for 45 days. As a result, OAH set this matter for an expedited hearing. Student has not demonstrated that grounds exist to unexpedite this matter. Therefore, Student's motion to unexpedite is denied.

ORDER

1. Student's motion to dismiss is denied.
2. Student's motion for sanctions is denied.
3. Student's motion to unexpedite is denied. The matter shall proceed as scheduled.

Jennifer Kelly

Jennifer Kelly

Administrative Law Judge

Office of Administrative Hearings