

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

HORICON ELEMENTARY SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2015100515

ORDER DENYING MOTION TO
UNEXPEDITE HEARING

On October 14, 2015, District filed an Expedited Due Process Hearing Request (expedited complaint) against Student. On October 15, 2015, the Office of Administrative Hearings issued a Scheduling Order and Notice of Expedited Due Process Hearing, Prehearing Conference, and Mediation. The Amended Scheduling Order set this matter for prehearing conference on November 2, 2015, and for hearing on November 10, 12, and 17, 2015. Mediation was held on October 27, 2015.

On October 21, 2015, Student filed a motion to unexpedite this matter and vacate the expedited dates. Student contended that the matter no longer needed to be expedited because the parties had agreed at an Individualized Educational Program team meeting to put student on home instruction. As a result, she argues, Student no longer poses a danger to other students, District staff, or herself. On October 23, 2015, District filed a response. District asserted that there was still risk to the District staff involved in student's home instruction and risk of self-injury, and that the home instruction plan is only a temporary placement until the completion of a functional behavior assessment of Student is completed. Student filed a response to District's opposition on October 26, 2015. Student argued therein that she was placed in home study for up to 60 days, and therefore District's request in the complaint for a 45-day placement was moot.

APPLICABLE LAW

A local educational agency that believes that maintaining the current placement of a child with a disability which believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others may request and is entitled to receive an expedited due process hearing. (20 U.S.C. § 1415(k)(3)(A); 34 C.F.R. § 300.532(a) (2006).) 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) (2006).) The procedural right to an expedited due process hearing is mandatory and does not authorize OAH to make exceptions or grant

continuances of expedited matters. (*Ibid.*) In sum, a matter can only be unexpedited or continued if no issue is alleged that is subject to an expedited hearing, or if the party withdraws the issues in the complaint that triggered the expedited hearing.

DISCUSSION

District initially sought an expedited hearing because it believed Student's placement in a general education classroom in the Horicon Elementary School District was substantially likely to result in injury to Student, other students, and District staff. District believed that education in a more restrictive environment was necessary, and sought an order to place Student at Anova, a non-public school for students with high-functioning autism, social and emotional challenges, and learning differences, for a 45-day interim alternative educational placement. An IEP meeting was held on October 15, 2015, at which the parties agreed to place student on home study for up to 60 days pending the completion of a functional behavior assessment. Student argues that this placement may extend past the duration of the proposed placement at Anova, and, in any event, the home study placement means that there is no longer a risk of injury to justify expedited proceedings. District disagrees that all risk is negated by the home study placement, and that home study is not the least restrictive environment for Student's education.

Student seeks to vacate the expedited hearing dates even though issues raised in the complaint are subject to an expedited time frame. Specifically, District has alleged risk of injury to Student and to District staff. Review of the allegations of the complaint indicates that Student's most aggressive or injurious behavior has been directed at District staff. District asserts that the risk of injury to its staff and to Student is maintained in Student's home study placement. A placement that presents a substantial likelihood of risk of injury is properly subject to expedited hearing, and the expedited hearing time frame applies. Student asserts that the allegation of risk is not credible; that is a matter to be resolved at hearing. Accordingly, the motion to unexpedite the hearing dates must be denied.

ORDER

Student's motion to unexpedited hearing dates is denied. The matter shall proceed on the following expedited dates:

1. Prehearing conference will take place at 1:00 p.m. on November 2, 2015.

2. The hearing shall begin on November 10, 2015, at 9:30 a.m. at the District offices at Horicon Elementary School District, 35555 Annapolis Road, Annapolis, CA 95412, and continue on November 12 and 17, 2015, and day to day thereafter at the discretion of the administrative law judge.

IT IS SO ORDERED.

DATE: October 30, 2015

/s/

CHRIS BUTCHKO
Administrative Law Judge
Office of Administrative Hearings