BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. SACRAMENTO CITY UNIFIED SCHOOL DISTRICT,	OAH Case No. 2015090559
SACRAMENTO CITY UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2015090053 ORDER GRANTING MOTION TO CONSOLIDATE

On August 31, 2015, Sacramento City Unified School District filed a Request for Due Process Hearing in OAH Case Number 2015090053 (First Case), naming Student. First Case had both an expedited and non-expedited issue and the matter was set with both expedited and non-expedited hearing dates.

On September 14, 2015, Student filed a Request for Due Process Hearing in OAH case number 2015090559 (Second Case), naming Sacramento. Second Case had both expedited and non-expedited hearing issues and dates as well.

On September 14, 2015, Student also filed a Motion to Consolidate the First Case with the Second Case.

On September 15, 2015, Sacramento filed an opposition to consolidation on the ground that it did not want to have the expedited hearing in the First Case, OAH Case Number 2015090053, delayed. Further, Sacramento claimed that there were no issues in the Second Case that were "duplicative" with the issues in the First Case. Student filed a reply to the opposition on September 16, 2015.

APPLICABLE LAW

Although no statute or regulation specifically provides a standard to be applied in deciding a motion to consolidate special education cases, OAH will generally consolidate matters that involve: a common question of law and/or fact; the same parties; and when consolidation of the matters furthers the interests of judicial economy by saving time or preventing inconsistent rulings. (See Gov. Code, § 11507.3, subd. (a) [administrative proceedings may be consolidated if they involve a common question of law or fact]; Code of Civ. Proc., § 1048, subd. (a) [same applies to civil cases].)

A child with a disability has procedural rights when faced with a change in educational placement caused by a violation of a code of student conduct. (34 C.F.R. §§ 300.530, 300.532, 300.536 (2006).)

Within 10 school days of a decision by a school district to change the placement of a child with a disability based upon a violation of a code of conduct, the district must convene an individualized educational program team meeting with the purpose of determining whether the conduct was a manifestation of the student's disability. (34 C.F.R. § 300.530(e)(2006).)

A district may place a special education student in 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 child's disability, under special circumstances involving specified drug and weapons offenses, or when the child has inflicted serious bodily injury upon another person on school premises or at a school function. (20 U.S.C. § 1415(k)(1)(G); 34 C.F.R. §300.530(g).) The student's IEP team determines the interim alternative educational setting. (20 U.S.C. § 1415(k)(2); 34 C.F.R. § 300.531.) If parents do not agree with the offered interim alternative educational setting, the district can file a request for an expedited due process hearing. (34 C.F.R. § 300.532 (a).)

A parent of a child with a disability who disagrees with any decision by a school district regarding a change in educational placement of the child based upon a violation of a code of student conduct, or who disagrees with a manifestation determination conducted by the district, may request and is entitled to receive an expedited due process hearing. (34 C.F.R. § 300.532(a) (2006).) The procedural right that affords the parties an expedited due process hearing is mandatory and does not allow OAH to make exceptions. (34 C.F.R. § 300.532(c)(2).) An expedited due process hearing, must occur within 20 school days of the date the complaint requesting the hearing is filed." (34 C.F.R. § 300.532(c)(2) (2006).) In California, OAH is the hearing office that assumes this responsibility for the California Department of Education. (Ed. Code, § 56504.5, subd. (a).)

DISCUSSION

Sacramento, in the First Case, is asking that it be permitted to place Student in an interim alternative educational setting for 45 school days. The due process hearing for the expedited case is set to begin September 22, 2015, and will continue on September 23 and 24, 2015.

Sacramento also asks OAH to find that the offer of a nonpublic school placement in Student's individualized education program of February 5, 2015, as amended August 10, 2015, be found to meet his unique needs and provide him with a free appropriate public education. The nonexpedited issue is set for a prehearing conference on October 2, 2015, at 1:00 p.m., and a due process hearing on October 12-14, 2015.

Student, in the Second Case, is asking that OAH find that Sacramento conducted a manifestation IEP team meeting on June 4, 2015, concerning the same disciplinary action referenced in Sacramento's complaint, that was legally noncompliant. This issue has been expedited with an expedited mediation at 9:30 a.m., on September 24, 2015, a prehearing conference on September 28, 2015 at 10:00 a.m., and a due process hearing set to commence on October 1, 2015.

Student also has also made allegations concerning the provision of a free appropriate public education to Student for the 2013-2014, 2014-2015, and 2015-2016 school years. This nonexpedited portion of Student's case is set for mediation on October 20, 2015, a prehearing conference on October 30, 2015 at 10:00 a.m., and a due process hearing to commence on November 5, 2015.

The parties' expedited issues concern the same disciplinary event and are therefore appropriate for consolidation. However, the expedited cases have specific timelines which must be met and no continuances are generally not granted in expedited matters. Therefore, the currently set dates for the expedited issues in both Sacramento's case and Student's case shall remain as currently set. Sacramento shall have the burden of proof in the expedited hearing on the issue filed in First Case beginning on September 22, 2015. Student shall have the burden of proof in the expedited hearing set to begin on October 1, 2015 on the expedited issue filed in Second Case.

In the nonexpedited cases, Sacramento asks for a finding that it offered/provided Student with a FAPE from the time of an IEP team meeting on February 5, 2015. Student asks for a finding that Sacramento did not offer/provide Student with a FAPE for the 2013-2014, 2014-2015, and 2015-2016 school years. Since there is some overlap in the time periods at issue the nonexpedited matters are appropriate for consolidation.

ORDER

1. Student's motion to consolidate is granted.

2. The 45-day timeline for issuance of the decision in the nonexpedited consolidated cases shall be based on the date of the filing of the complaint in OAH Case Number 2015090559 (Second Case).

3 The due process hearing in Sacramento's expedited case (First Case, OAH Case Number 2015090053), shall proceed as currently scheduled, beginning at **9:30 a.m. on September 22, 2015, and continuing at 9:00 a.m. on September 23 and 24, 2015. The timeline for issueance of expedited decision in First Case has not changed**.

4. The mediation for Student's expedited case (Second Case), is scheduled for **September 24, 2015, at 9:30 a.m.** The PHC in Student's expedited case shall occur **September 28, 2015, at 10:00 a.m.** The due process hearing for Student's expedited case OAH Case Number 2015090559, shall begin on **October 1, 2015, at 9:30 a.m. continuing day to day thereafter, Monday through Thursday, at the discretion of the ALJ. The timeline for issuance of the expedited decision in Second Case has not changed.**

5. The mediation, prehearing conference and hearing dates for the nonconsolidated matters shall proceed as currently scheduled. The mediation for the consolidated nonexpedited issues shall be held on **October 20, 2015, at 9:30 a.m.** PHC for the consolidated nonexpedited issues in this consolidated case shall be held on **October 30, 2015, at 10:00 a.m.** The due process hearing for the nonexpedited issues in this consolidated case shall begin on **November 5, 2015, at 9:30 a.m. continuing day to day thereafter, Monday through Thursday, at the discretion of the ALJ.** All other dates are vacated.

DATE: September 21, 2015

/S/

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings