BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. PANAMA-BUENA VISTA UNION SCHOOL DISTRICT,	OAH Case No. 2015040188 (primary) OAH Case No. 2014100290 (not consolidated)
PANAMA-BUENA VISTA UNION SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2015031164 ORDER PARTIALLY GRANTING STUDENT'S MOTION TO CONSOLIDATE AND CONTINUING AND RESETTING CONSOLIDATED NON-EXPEDITED HEARING DATES

On October 6, 2014, Student filed with the Office of Administrative Hearings a request for an expedited and non-expedited Due Process Hearing (complaint) in OAH case number 2014100290 (Student's First Case), naming Panama-Buena Vista Union School District. At Student's request, OAH dismissed the expedited issues on November 3, 2014. On November 24, 2014, Student filed an amended complaint, alleging expedited and non-expedited issues. OAH held the expedited hearing on January 6, 7, and 8, 2015 and an Expedited Decision was issued on January 16, 2015. The non-expedited issues are scheduled for hearing on April 15, 16, 17 and 20, 2015.

On March 25, 2015, District filed a complaint in OAH case number 2015031164 (District's Case), naming Parent on Student's behalf. That matter is scheduled for hearing on April 21, 2015.

On April 3, 2015, Student filed a Request for Due Process Hearing in OAH case number 2015040188, naming District (Student's second case). Student's Second Case included both expedited and non-expedited issues. OAH issued a dual scheduling order in Student's second case on April 8, 2015, setting the expedited issues for hearing on April 29-May 1, 2015, and the non-expedited issues on May 28, 2015.

On April 3, 2015, Student filed a Motion to Consolidate Student's First Case with Student's Second Case and District's Case. Student also requested that the consolidated matters, including the expedited issues in Student's Second Case, be heard in one hearing.

On April 8, 2015, District filed an opposition to the Motion to consolidate the three cases.

Consolidation

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].)

Student's First Case has already started hearing, and OAH has issued a final decision on the expedited issues raised by Student under title 20 section 1415(k)(5). The hearing on the non-expedited issues is scheduled to begin on April 15, 2015, a date that the parties jointly agreed to in December, 2014. The issues in Student's first case involve allegations that District failed to provide documents in 2007 or 2008 to another school district after Student transferred districts, failed to provide all documents to Parent in Spanish, and failed its Child Find obligations to Student between August 2014 and November 24, 2014.

Student's Second Case re-alleges the facts asserted in Student's First Case, asserts the same and additional issues, but expands the timelines 2015 through the date on which it was filed. Student asserts that District inappropriately suspended and expelled Student beginning in August 2014; that the behaviors causing suspension were a manifestation of Student's disability; and that District did not hold a manifestation determination before suspending and expelling him, thus justifying an expedited hearing. Student also asserts that District failed its Child Find obligations to Student from August 2014 until January 2015; that District's 2015 assessments were not appropriately conducted; that, although District found Student eligible for special education in February 2015, Parent disagreed with the eligibility category and challenged District's assessments; and District denied Student a free appropriate public education by failing to provide an appropriate placement and services through the date the complaint was filed.

District's Case seeks a finding that its January and February 2015 assessments were appropriate, and therefore Student is not entitled to independent educational evaluations at public expense.

The Student's First Case is already in the middle of hearing, and involves issues dating back to 2007/2008 and through November 24, 2014. Although Student has restated those issues in Student's Second Case, the new claims post-date those in the First Case,

which is now six months old. District opposes consolidation, contending that Student's Second Case is nothing more than effectively a second amendment of the original complaint, and that the restated issues may be barred by doctrine of res judicata, thus necessitating a separate hearing on the new claims. Additionally, the issues in Student's First Case have no similarity to the issues in District's Case. The IDEA mandates that due process claims be heard in a timely manner. The interests of justice are not served by consolidation of Student's First Case with District's Case, and Student has not demonstrated good cause to further delay the hearing in the non-expedited issues in Student's First Case by consolidating it with Student's Second Case and District's case. Therefore, Student's motion is denied as to consolidation of Student's First Case with Student's Second Case and District's Case.

However, Student's Second Case and District's case have common issues, specifically whether District appropriately assessed Student in January and February 2015. District argues that some of Student's issues in his Second Case may be barred by the doctrine of res judicata, and therefore a separate hearing on Student's case is appropriate. The possible application of the doctrine of res judicata as a defense does not bar OAH from consolidating the two cases. The two cases involve the same or similar facts, witnesses and evidence and consolidation serves the interest of judicial economy. For these reasons, consolidation is granted as to Student's Second Case and District's Case.

Continuance

A due process hearing must be held, and a decision rendered, within 45 days of receipt of the complaint, unless a continuance is granted for good cause. (Ed. Code, §§ 56502, subd. (f) & 56505, subd. (f)(1)(C)(3); 34 C.F.R section 300.515(a)(1) (2006)[1].) In the case of non-expedited claims raised in Student's Second Case, District is entitled to participate in a resolution session pursuant to title 20 United States Code section 1415(f)(1)(B)(i)(I) and 34 C.F.R. section 300.510(a)(1), unless waived in writing by both parties. Claims arising under title 20 United States Code section 1415(k) must be conducted within 20 school days of the date an expedited due process hearing request is filed and a decision must be rendered within 10 school days after the hearing ends. (20 U.S.C. § 1415(k)(4)(B); 34 C.F.R. 300.532(c)(2).)

Student has requested that the consolidated cases be heard at the same time, including the expedited issues in Student's Second Case. Student's request is incompatible with the timelines required by the IDEA relating to expedited and non-expedited issues. As such, Student's request to have all issues heard in one hearing is denied.

All dates in District's Case will be vacated. The expedited portion of Student's case shall begin not more than 20 school days from April 3, 2015, as set forth in the Scheduling Order issued by OAH on April 8, 2015 in Student's Second Case. The non-expedited issues in the consolidated matters are continued and shall be scheduled consistent with the April 8,

[1] All citations to Code of Federal Regulations refer to the 2006 edition, unless otherwise noted.

2015 Scheduling Order in Student's Second Case. Mediation is voluntary and if the parties decline mediation in either the expedited or non-expedited portions of the consolidated cases, they shall give OAH reasonable notice of cancellation of the scheduled dates.

ORDER

1. Student's Motion to Consolidate Student's First Case (OAH Case No. 2014100290) with Student's Second Case (OAH Case No.2015040188) and District's Case (OAH Case No. 2015031164) is denied. Hearing in Student's First Case shall commence on April 15, 2015, as scheduled.
2. Student's Motion to Consolidate Student's Second Case (OAH Case No.2015040188) and District's Case (OAH Case No. 2015031164) is granted.
3. All dates previously set in OAH Case Number 2015031164(District's Case) are vacated.
4. Student's request that the consolidated matters, including expedited issues, be heard together on the same date is denied.
5. The expedited issues in Student's Second Case shall be mediated and heard as stated in OAH's Scheduling Order issued on April 8, 2015,4 in Student's Second Case. The parties shall timely notify OAH if they decline mediation in the expedited matter. The timeline for issuance of the Decision in the expedited hearing shall be as set forth in title 20 United States Code section 1415(k).
6. The mediation and hearing dates for the non-expedited issues in the consolidated matters are continued and shall be set in accordance with the April 8, 2015 Scheduling Order in Student's Second Case.
7. The 45-day timeline for issuance of the decision in the hearing of the non-expedited issues in the consolidated cases shall be based on the date of the filing of the complaint in OAH Case Number 2015040188 [Student's Second Case].

DATE: April 8, 2015

/s/
ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings