BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS OF:

PARENT ON BEHALF OF STUDENT,

V.

COMMUNITY ROOTS ACADEMY AND

EL DORADO CHARTER SELPA,

OAH CASE NUMBER 2020100158

AND

COMMUNITY ROOTS ACADEMY,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NUMBER 2020090033

ORDER FOLLOWING PREHEARING CONFERENCE, GRANTING MOTION TO CONSOLIDATE AND DENYING MOTION TO DISMISS

OCTOBER 09, 2020

On October 9, 2020, Administrative Law Judge Jennifer Kelly, Office of Administrative Hearings, held a telephonic prehearing conference for OAH Case Number 2020090033. The Administrative Law Judge will be referred to as an ALJ. The prehearing conference will be referred to as a PHC. Cynthia Yount, Attorney at Law, appeared on behalf of Community Roots Academy. Meldie Moore, Attorney at Law, appeared on behalf of Student. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

MOTION TO CONSOLIDATE

On September 1, 2020, Community Roots Academy filed a Request for Due Process Hearing with OAH in case number 2020090033, First Case, naming Parents on behalf of Student.

On October 2, 2020, Parents on behalf of Student filed a Request for Due Process hearing in OAH case number 2020100158, Second Case, naming Community Roots Academy and El Dorado Special Education Local Plan Area.

On October 2, 2020, Parents on behalf of Student filed a Motion to Consolidate First Case with Second Case. The motion was timely filed three days prior to the prehearing conference

On October 7, 2020, Community Roots Academy filed a statement of non-opposition. El Dorado SELPA has not yet made an appearance in Second Case.

No statute of regulation specifically provides a standard to be applied in deciding a motion to consolidate special education cases. However, OAH will generally consolidate matters that involve the same parties, a common question of law and/or fact, 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 Civ. Proc. § 1048, subd. (a) [same applies to civil cases.].)

Here, First Case and Second Case involve a common question of law or fact, specifically whether Community Roots Academy denied Student a free appropriate public education by offering Student placement in a therapeutic program designed to address Student's maladaptive behaviors on a general education campus in Student's school district of residence. Consolidation of these matters furthers the interests of judicial economy because both cases involve the same issues, parties and witnesses. Judicial economy will be furthered by consolidating these matters and having them heard jointly. Further, consolidation of these cases will avoid inconsistent rulings.

Accordingly, Student's consolidation request is granted.

MOTION TO DISMISS

On October 2, 2020, Student filed a Motion to Dismiss First Case on the basis Community Roots Academy had no authority to make an offer of placement in a therapeutic program in Capistrano Unified School District, Student's district of residence. On October 7, 2020, Community Roots Academy filed an opposition on the grounds it has the obligation to ensure a continuum of alterative placements available to meet the needs of children with disabilities, and that its offer of placement in a school within Student's district of residence was appropriate.

The purpose of the IDEA is to "ensure that all children with disabilities have available to them a free appropriate public education," 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 free appropriate public education 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 free appropriate public education 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].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified School. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction such as, civil rights claims, section 504 claims, enforcement of settlement agreements, or incorrect parties, special education law does not provide for a summary judgment procedure

Parties have 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 free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a).) Minimal pleading standards apply to requests for due process pursuant to the IDEA. (*Schaffer ex rel. Schaffer v. Weast*, (2005) 546 U.S. 49, 54 [126 S.Ct. 528, 163 L.Ed.2d 387.] All that is required in a due process hearing complaint is a description of the nature of the problem of the child related to the proposed initiation or change, including facts relating to the problem, and a proposed resolution of the problem to the extent known to the party at the time of filing. (Ed. Code § 56502(c)(1)(C) and (D); 20 U.S.C. § 1415 (b)(7)(B)(iii).)

The central issue alleged in First Case is whether Community Roots Academy's offer of placement in the Capistrano Unified School District was appropriate under the IDEA. Second Case raises the same issue, namely whether Community Roots Academy's offer of placement was appropriate and whether Community Roots Academy denied Student a FAPE by offering this placement, as well as failing to appropriately assess Student and provide Student necessary services and supports. The issues alleged in First and Second Case fall under the purview of the IDEA. OAH cannot make a factual determination whether Community Root Academy's offer of placement was appropriate without an evidentiary hearing. 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. Further, Student's Motion to Dismiss is rendered moot by the filing of Second Case alleging the identical issue; namely whether the offer of placement was appropriate under the IDEA. Accordingly, the Motion to Dismiss is denied.

ORDER

1. Student's Motion to Consolidate is granted.
2. Second Case, OAH case number 2020100158, is designated as the Primary Case. All dates set in First Case, OAH case number 2020090033 are vacated.
3. The 45-day timeline for issuance of the decision in the consolidated cases shall be based on the date of the filing of the complaint in Primary Case, OAH case number 2020100158.

4. Student's Motion to Dismiss First Case, OAH case number 2020090033 is denied.

IT IS SO ORDERED.

DocuSigned by:
Jennifer Kelly
E1656813A1A1454...

Jennifer Kelly

Administrative Law Judge

Office of Administrative Hearings