BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. OCEANSIDE UNIFIED SCHOOL DISTRICT,	OAH Case No. 2015120077 [Primary Case]
PARENT ON BEHALF OF STUDENT, v. OCEANSIDE UNIFIED SCHOOL DISTRICT,	OAH Case No. 2015041216
OCEANSIDE UNIFIED SCHOOL DISTRICT, v. STUDENT.	OAH Case No. 2015101074 ORDER GRANTING MOTION TO CONSOLIDATE CASES AND SETTING SCHEDULE FOR CONSOLIDATED NON-EXPEDITED AND CONSOLIDATED EXPEDITED MATTERS

On September 21, 2015, Student filed an Amended Due Process Complaint in Office of Administrative Hearings case number 2015041216 naming Oceanside Unified School District (Student's Initial Case). Students Initial Case included allegations that a 45 day interim alternative educational setting offered by District on September 11, 2015, had denied Student a free appropriate public education, among other claims.

On October 26, 2015, Oceanside Unified School District filed a Request for Due Process Hearing in OAH case number 2015101074 naming Student (District's Case). District's Case, among other claims, defended its September 11, 2015 offer of the 45 day interim alternative educational setting.

On November 3, 2015, Student's Initial Case and District's case were consolidated.

On November 30, 2015, Student filed a Request for Due Process Hearing in OAH case number 2015120077 (Student's Subsequent Case.) Student's Subsequent Case included allegations that the 45 day interim alternative educational setting was inappropriate, among other claims. By Amended Scheduling Order Dated December 18, 2015, Student's Subsequent Case was set for dual expedited and non-expedited mediation and hearing dates.

On December 15, 2015, District filed a Motion to Consolidate Student's Initial Case, District's Case, and Student's Subsequent Case into one proceeding. On December 18, 2015, Student filed a Non-Opposition. As discussed below, the motion is granted, the cases consolidated, and all issues alleged in all three cases concerning the 45 day interim alternative educational setting are set for the same expedited hearing dates that have been scheduled for Student's Subsequent Case.

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 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 made by the district, 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 student withdraws the issues in the complaint that triggered the expedited hearing.

DISCUSSION

Here, the parties agree, Student's Initial Case, District's Case and Student's Subsequent Case all involve common questions of law and fact. District's complaint alleged two issues, in brief: whether District may conduct a functional behavior assessment and whether it offered Student a free appropriate public education in an individualized education program dated September 11, 2015, that included a 45 day interim alternative educational

placement. Student's Initial Case alleged six issues that encompassed District's issues and arose during the same time period, including Issue Six that challenged the 45 day interim alternative educational placement. Student's Subsequent Case made further allegations concerning assessments, placement, behavior services, and in Issue Number 5 it again challenged the 45 day interim alternative educational setting.

There will be substantial overlap in the potential witnesses and exhibits involved in all three matters. In addition, consolidation furthers the interests of judicial economy and avoids the potential for inconsistent results. Accordingly, consolidation is granted.

The facts as stated in all three complaints relating to the changes in Student's educational placement to a 45 day interim alternative educational setting raised issues to which an expedited hearing time frame applies. Thus both District's Case and Student Initial Case included both expedited and non-expedited issues, but were inadvertently set only for non-expedited hearing dates.

Student's Subsequent Case shall be designated the primary case, and since it contains both expedited and non-expedited issues, it has been scheduled for dual hearing dates. Further, since both Student's Initial Case and District's Case also included expedited issues that were inadvertently not set for expedited hearing dates, all expedited issues alleged in all three cases shall be heard on the expedited hearing dates that have been set in Student's Subsequent Case.

ORDER

1. District's Motion to Consolidate is granted.
2. All dates previously set in OAH Case Numbers 2015041216 and 2015101074 are vacated.
3. The timelines for issuance of the non-expedited and expedited decisions in the consolidated cases shall be based on the date of the filing of the complaint in OAH Case Number 2015120077, Student's Subsequent Case.

IT IS SO ORDERED.

DATE: December 21, 2015

/S/

JUNE R. LEHRMAN
Presiding Administrative Law Judge
Office of Administrative Hearings