BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. KERN HIGH SCHOOL DISTRICT.	OAH Case No. 2017010971 ORDER DENYING STUDENT'S MOTION TO CONSOLIDATE

On November 4, 2016, Kern High School District filed with the Office of Administrative Hearings a request for due process hearing (complaint) in OAH case number 2016110214, naming Student (District's Case).

On January 26, 2017, Student filed a complaint in OAH case number 2017010971, naming District (Student's Case). Student's Case alleges both expedited and unexpedited issues.

On January 27, 2017, Student filed a motion to consolidate Student's Case with District's Case.

On January 30, 2017, District filed an opposition to the motion to consolidate.

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 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

The complaint in District's Case alleges that: Parent has not consented to the August 15, 2016 individualized education program offered to Student, Parent has not consented to the August 26, 2016 assessment plan, and District cannot assess Student or implement the behavioral interventions offered. District's issues are (1) whether it may conduct the assessments without parental consent, and (2) whether the August 15, 2016 IEP offered Student a free appropriate public education in the least restrictive environment.

Student's complaint alleges that District repeatedly suspended Student for disciplinary reasons beginning August 18, 2016, most recently suspending Student for five days on January 25, 2017, and failed to implement Student's then-current IEP; Parent disagreed with District's offer of FAPE and Student's removal from school sports in October 2016. Student's issues are: (1) whether the behaviors causing suspension were a manifestation of Student's disability; (2) whether District failed to implement Student's IEP; (3) whether District predetermined Student's placement; and (4) whether Parent was denied a meaningful opportunity to participate in the IEP process. Student's first issue involves a disciplinary change of placement and is expedited, his remaining issues are not. As remedies, Parents seeks a manifestation determination as expedited relief, and a transition evaluation, additional related services and compensatory education as unexpedited relief.

Student seeks to consolidate the cases to avoid three separate hearings involving common facts, law and witnesses in District's Case, Student's expedited issues and Student's unexpedited issues.

Student's expedited issue concerns disciplinary events that occurred after August 15, 2016. That disciplinary issue stands alone and apart from the issues alleged in District's Case of whether it was entitled to assess Student and whether the August 15, 2016 IEP offered Student a FAPE. An IEP is evaluated in light of the information available to the IEP team at the time it was developed, not judged in hindsight. (See *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.) In addition, expedited cases have specific timelines which must be met and continuances are generally not granted in expedited matters. Expedited and unexpedited issues are not heard and decided in the same due process hearing, and consolidation will not prevent a separate hearing on Student's expedited issue

Similarly, Student's unexpedited issues allege, for the greater part, a *post*-August 15, 2016 denial of FAPE by District in failing to implement Student's current IEP, removing Student from sports in October 2016, and failing to take Parent's concerns into consideration. To the extent Student contends procedural or substantive violations by District in requesting assessments or the creation of the August 15, 2016 IEP, Student may present evidence of

these errors in the due process hearing on District's case, and the decision in District's Case will have preclusive effect. Therefore, consolidation of District's issues with Student's unexpedited issues is not necessary to avoid duplication of witnesses and evidence at hearing.

Student's moving papers do not establish that consolidation of his expedited or unexpedited issues with District's issues will further the interests of judicial economy. Different witnesses and evidence will be presented in each case. Consolidation of these cases is not necessary to avoid the duplication of time, expense and resources involved in having these matters proceed to hearing separately, or to avoid the possibility of conflicting results.

Accordingly, Student's motion to consolidate is denied.

IT IS SO ORDERED.

DATE: January 31, 2017

DocuSigned by:
Alexa Hohensee
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ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings