BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: CA EDUCATION AUTHORITY, v. GUARDIAN AD LITEM ON BEHALF OF STUDENT.	OAH Case No. 2015080190 ORDER DENYING REQUEST FOR EXPEDITED HEARING AND REQUEST TO CONSOLIDATE

On August 4, 2015, the California Education Authority filed a request for due process hearing against Student (complaint).[1] The complaint requests that the Office of Administrative Hearings calendar this matter as an expedited hearing. In the alternative the Authority requests that the matter be consolidated with Student's pending case, OAH Case No. 2015060374. OAH has not received a response from Student and need not wait, as both requests are denied.

APPLICABLE LAW

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).)

[1] In the caption of the complaint, and elsewhere in the complaint, Renu R. George and Rebecca M. Armstrong, attorneys for the Authority, use Student's initials to identify Student. This was presumably done to protect the minor's identity. However, within the body of the complaint, they identify by name Student's parent, therefore defeating in part the attempt to protect the minor's confidentiality. Furthermore, the attachments to the complaint include an individualized education plan. The IEP is un-redacted and not only identifies Student by name, but provides other identifiable information, thereby defeating completely the attempt to protect Student's identity by using initials within the complaint. Regardless, the Authority should take notice that OAH treats all information in a special education due process case as confidential and there is no need to use initials to refer to Student in future filings with OAH.

DISCUSSION

Expedite Hearing

Under section 1415(k)(3) of title 20 of the United States Code, the Individuals with Disabilities Education Act sets forth very specific requirements for when a party is entitled to an expedited hearing. An expedited hearing requires issues concerning a change in placement due to disciplinary measures by the education agency. Here, the Authority seeks an expedited hearing because it asserts it is required to conduct Student's triennial assessment and hold an IEP team meeting by August 28, 2015. The Authority has failed to identify an issue for hearing that would trigger the expedited hearing procedures of the IDEA. Therefore, the request to calendar this matter as an expedited hearing is denied.

Consolidation

The Authority's complaint is pled as a request for expedited hearing or in the alternative a request to consolidate the complaint with Student's pending matter in OAH Case No. 2015060374. OAH will consolidate matters where they share a commonality in facts, issues, evidence or witnesses, and where consolidation will promote judicial economy. OAH is not opposed to consolidating this matter with Student's case. However, OAH may require a party to file separate motions in order to ensure its ability to timely and properly process a case. Therefore, the Authority's request to consolidate is denied without prejudice. The Authority, or Student if Student is so inclined, may file a stand-alone request to consolidate, setting out grounds why the two matters should be consolidated.

ORDER

1. The request for an expedited hearing is denied.

2. The request to consolidate is denied without prejudice.

DATE: August 6, 2015

/S/

BOB N. VARMA
Division Presiding Administrative Law Judge
Office of Administrative Hearings