BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: CASTRO VALLEY UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2017021178 ORDER DENYING STUDENT'S MOTION TO CONSOLIDATE AND CONTINUE

1. Motion to Consolidate. On February 27, 2017, Castro Valley filed a Request for Due Process Hearing naming Student in OAH Case Number 2017021178, (Castro Valley's Case). On March 24, 2017, Student filed a Request for Due Process Hearing naming Castro Valley in OAH Case Number 2017031175 (Student's Case). At the same time, Student filed a Request to consolidate District's Case with Student's Case. On March 24, 2017, Castro Valley filed its opposition to Student's Motion to Consolidate and Continue.

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].)

In Castro Valley's case, filed February 27, 2017, the issues for hearing are whether Castro Valley's October 2016, psychological assessment, speech and language assessment, and occupational therapy assessment met all legal requirements such that Parents are not entitled to independent educational evaluations at public expense.

In Student's case, filed on March 24, 2017, the issues for hearing are:

Issue 1. Castro Valley failed to meet its "Child Find" obligation when Castro Valley utilized Response to Intervention (RTI) and Section 504 to delay evaluations of Student who had a diagnosed disability for more than four years.

Issue 2. Castro Valley denied Student a free appropriate public education in the 2015-2016 schoolyear by failing to assess Student for special education eligibility, by failing

to prepare and present an assessment plan when parents requested consideration of Student for an individualized education program.

Issue 3. Castro Valley denied Student a FAPE during the 2016-2017 schoolyear by delaying presentation of an assessment plan for three months, by failing to conduct appropriate assessments, and by failing to consider the impact of Student's medication on test results.

Issue 4. Castro Valley denied Student a FAPE by denying meaningful parent participation in the IEP process by predetermining eligibility; by denying parental request for the identity and credentials of the assessors; by refusing to inform parents of the assessment schedule; by bullying and intimidating parents during the IEP meetings; and by ignoring parental input.

Student's Case and Castro Valley's Case involve common questions of law and fact, and overlapping time frames. Evaluating and addressing the issues raised will involve the same or similar documents and witnesses. However, most of Student's issues raised in Student's case appear to be defenses to the assessment issues raised in Castro Valley's case. Student's other issues would potentially involve other evidence and witnesses. It does not appear that Student would be prejudiced if Castro Valley's case and Student's case proceeded separately. Student could litigate those issues remaining in Student's case without risk of inconsistent rulings.

Student supports his request for consolidation by underlining that mediation would be available to potentially resolve Student's and Castro Valley's cases. However, mediation was scheduled in Castro Valley's case for March 13, 2017, and the date for mediation was vacated by Student's attorney on March 10, 2017, without a request for a new mediation date. Student also did not request mediation during the Prehearing Conference which was held on March 20, 2017. Castro Valley, in opposing Student's Motion to Consolidate and Continue, did not agree to delay the hearing to participate in mediation. Based on Student's delay in filing this Motion to Consolidate and Continue, until less than three days before the scheduled hearing, Student's motion to consolidate is denied.

2. Motion to Continue. A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Speedy resolution of the due process hearing is mandated by law and continuance of the hearing may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f)(3).) In ruling upon a motion for continuance, OAH is guided by the provisions found within the Administrative Procedure Act and the California Rules of Court that concern motions to continue. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, rule 3.1332.) Generally, continuances of matters are disfavored. (Cal. Rules of Court, rule 3.1332(c).)

Student's motion to continue is denied as the issue is moot as Student's request for continuance was conditioned on the granting of the Motion to Consolidate.

IT IS SO ORDERED.

DATE: March 27, 2017

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Rita Defilippis
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RITA DEFILIPPIS
Administrative Law Judge
Office of Administrative Hearings