BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023120395

ORDER DENYING MOTION TO CONSOLIDATE

JANUARY 10, 2024

On December 12, 2023, Parents on behalf of Student filed with the Office of Administrative Hearings, called OAH, a request for due process hearing in OAH case number 2023120395, naming Santa Monica-Malibu School District. Santa Monica-Malibu School District is called Santa Monica-Malibu in this order.

On December 12, 2023, OAH designated this matter a dual case, meaning that there were expedited issues and non-expedited issues alleged in Student's 27-issue complaint. On January 2, 2024, OAH ordered that Student's Issues 19, 20, and 21 be heard on an expedited basis because those issues raised claims regarding alleged errors in a manifestation determination review meeting, an alleged violation of the school's code of conduct that resulted in a suspension, and a changed placement. OAH determined these claims were raised under title 20 United States Code section 1415(k),

called Section 1415(k), and were required to be heard within the short statutory timeline for expedited claims. The hearing on the expedited issues is scheduled to begin on January 23, 2024, with the hearing on non-expedited issues beginning on January 30, 2024.

On January 5, 2023, Student filed a motion to consolidate the expedited and non-expedited claims. Student submits the sworn declaration of Parent that Parent anticipates being hospitalized for a week in February 2024, and that a new prescription drug may impact her cognition and recall. Student seeks to have all issues heard on an expedited basis, as the issues are related, many witnesses will be the same, and Student does not want to continue the hearing on non-expedited claims to accommodate Parent's illness or hospitalization.

On January 10, 2024, Santa Monica-Malibu filed an opposition to the motion. Santa Monica-Malibu contends Student's Issues 19, 20, and 21 arising under Section 1415(k) and Issues 1 through 18, and 22 through 27, for denial of a free appropriate public education, or FAPE, do not involve common questions of law or fact. It contends Section 1415(k) claims are very limited and different laws apply to expedited and non-expedited claims.

No statute or 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 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 of Civ. Proc., § 1048, subd. (a) [same applies to civil cases].)

Student's motion fails for several reasons. First, consolidation of special education matters applies to multiple cases, and not issues alleged within a single complaint.

Second, all dual cases have expedited and non-expedited issues that are heard at different hearings, under different statutory frameworks. For example, although an expedited claim must be heard within 20 school days of the filing of the hearing request and a determination made within 10 school days after the hearing (20 U.S.C., § 1415(k)(4)(a), a due process hearing on non-expedited claims must be conducted and a decision issued within 45 days of receiving the due process complaint, unless an extension is granted. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Student seeks to change the statutory timelines applicable to Issues 1 through 18, and 22 through 27. Nothing in consolidation law authorizes such a change.

Third, most, if not all, dual cases involve overlapping evidence and witnesses. Claims in dual cases necessarily alleged a denial of FAPE alongside expedited claims. Typically, FAPE denials are alleged to be the cause, or the result, of the actions or inactions of school district staff alleged under Section 1415(k). The existence of common evidence and witnesses for expedited and non-expedited claims in a dual case is not grounds for consolidation. Rather, a dual case mandates two separate hearings, one expedited and one not.

In addition, Student has multiple options to accommodate Parent. Student can agree to continue the non-expedited hearing to a date when Parent's doctor opines Parent should be well enough to participate in or testify at hearing. Student contends Parent is the primary witness and should be able to establish good cause for a continuance. (See Ed. Code, § 56505, subd. (f)(3).) The unavailability of Parent is not

grounds for consolidating Student's expedited and non-expedited cases into an expedited hearing.

If Student does not want a continuance, Parent can request reasonable accommodations from OAH's Americans with Disabilities Act, or ADA, coordinator to allow Parent to participate in the hearing. Parent can reach the ADA coordinator by calling OAH's main number, emailing the ADA coordinator, or requesting accommodations at OAH's website. Contact information for reasonable accommodation requests will be discussed at both the expedited and non-expedited prehearing conferences. The requests are processed confidentially, and accommodations such as, for example, allowing Parent to testify at certain times of the day when Parent feels strongest, will be implemented at hearing if granted.

For the reasons stated, Student's motion to consolidate is denied.

IT IS SO ORDERED.

Alexa Hohensee

Alexa Hohensee
Administrative Law Judge
Office of Administrative Hearings