BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENTS ON BEHALF OF STUDENT, v. BRENTWOOD UNION SCHOOL DISTRICT,	OAH Case No. 2018010683
BRENTWOOD UNION SCHOOL DISTRICT, v. PARENTS ON BEHALF OF STUDENT.	OAH Case No. 2017120966 ORDER FOLLOWING PREHEARING CONFERENCE, GRANTING MOTION TO CONSOLIDATE NON-EXPEDITED ISSUES, AND DESIGNATING STUDENT'S CASE AS LEAD

On January 22, 2018, a telephonic prehearing conference as to the non-expedited issue in the District-filed matter was held before Administrative Law Judge Theresa Ravandi, Office of Administrative Hearings. Paul R. Gant, Attorney at Law, appeared on behalf of Brentwood Union School District. Mandy G. Leigh, Attorney at Law, appeared on behalf of Parents and Student.[1] The PHC was recorded.

Based upon discussion with the parties, the ALJ issues the following order:

1. Student's Motion to Consolidate. On December 27, 2017, Brentwood filed a request for due process hearing naming Student and identifying one expedited and one non-expedited issue for hearing. OAH set this matter for both expedited and non-expedited dates. On January 8, 2018, OAH granted Brentwood's request to continue the non-expedited hearing dates and both of Brentwood's issues were scheduled to be heard concurrently at a hearing beginning January 30, 2018.

On January 16, 2017, Student filed a request for due process hearing naming Brentwood. Student's Case is scheduled for hearing on March 13, 2018, with a prehearing conference on March 5, 2018. Student alleges that Brentwood denied her a free appropriate public education during the 2015-2016 through 2017-2018 school years.

[1] Law Clerk Andrea Swanson was present for a brief time.

On January 17, 2018, Student filed a motion to consolidate her case with Brentwood's Case as the two matters involve common questions of law and fact. Student proposes to advance the dates set for her case, and proceed on the current hearing schedule with the addition of extra hearing dates.

On January 22, 2018, Brentwood filed a response. Brentwood does not oppose consolidation of its non-expedited issue with Student's Case but it is not willing to waive the statutory resolution period. During the PHC, Both parties were heard as to Student's request to consolidate.

Consolidation

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].)

Resolution Period

A local educational agency is required to convene a meeting with the parents and the relevant members of the Individualized Education Program team within 15 days of receiving notice of the student's complaint. (20 U.S.C. § 1415(f)(1)(B)(i)(I); 34 C.F.R. § 300.510(a)(1).) The resolution session need not be held if it is waived by both parties in writing or the parties agree to use mediation. (34 C.F.R. § 300.510(a)(3).) If the parents do not participate in the resolution session, and it has not been otherwise waived by the parties, a due process hearing shall not take place until a resolution session is held. (34 C.F.R. § 300.510(b)(3).) If the parties agree to waive the resolution session, the 45-day timeline for a due process hearing begins the day after the waiver. (*Id*. at § 300.510(c)(1).)

Provisions for Expedited Hearings

A school district that believes that maintaining a child in her current placement is substantially likely to result in injury to the child or others, has the right to request and receive an expedited due process hearing. (20 U.S.C. § 1415(k)(3)(A); 34 C.F.R. § 300.532(a).) If it is determined that maintaining the current placement of the student is substantially likely to result in injury to the student or to others, the administrative law judge may order a change in placement to an appropriate interim alternative educational setting for not more than 45 school days. (20 U.S.C. § 1415(k)(3)(B)(ii)(II); 34 C.F.R. § 300.532(b)(2)(ii).) An expedited due process hearing before OAH must commence 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).) 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.*)

Both Student's Case and Brentwood's non-expedited issue call into question the appropriateness of Brentwood's offer of placement for the 2017-2018 school year. Therefore, both matters involve common questions of law and fact. Accordingly, consolidation is warranted as to Brentwood's non-expedited Issue 2 and Student's Case. Consolidation will prevent the risk of inconsistent rulings and furthers the interests of judicial economy because both cases involve the same parties, and many of the same witnesses will be required to testify in each proceeding. Each matter will also involve the introduction of many of the same documents.

However, OAH has no authority to consolidate Brentwood's expedited issue with Student's Case as this would violate mandatory provisions for commencing an expedited hearing within 20 school days of the date of filing the complaint. Student provides no legal authority for advancing Student's Case to proceed to hearing next week on the timelines set for the expedited hearing, in light of the statutory resolution period. Student's request that OAH order a deadline prior to January 26, 2018, for Brentwood to inform Student as to whether it intends to proceed to resolution is denied as Student provided no authority for this request.

When consolidating cases, OAH designates the statutory timelines applicable to the consolidated matters to be controlled by one of the cases. Here, the statutory timelines shall be controlled by Student's Case.

The consolidated non-expedited matter (Student's Case and Brentwood's Non-Expedited Issue 2) is scheduled as follows:

LAST DATE TO FILE:	February 28, 2018
PREHEARING CONFERENCE:	March 5, 2018, at 1:00 p.m.
DUE PROCESS HEARING:	March 13, 2018, at 9:30 a.m.

2. Expedited Prehearing Conference. At the start of the non-expedited PHC, both parties indicated a desire to proceed with the expedited PHC which is scheduled for Friday, January 26, 2018, at 10:00 a.m. However, Student intends to file a motion in limine and a motion for reconsideration and wishes to be heard as to these motions. As such, the expedited PHC is confirmed for Friday, January 26, 2018, at 10:00 a.m. Counsel were reminded that they must establish good cause as to why any motion is not filed in a timely manner by January 23, 2018. The expedited hearing shall commence as scheduled on January 30, 2018, at 9:30 a.m.

IT IS SO ORDERED.

DATE: January 22, 2018

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Theresa Ravandi
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THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings