

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

DAVIS JOINT UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015020031

ORDER DENYING MOTION TO
CONSOLIDATE AND CONTINUE

On January 30, 2015, Student filed a Due Process Hearing Request against District in Case Number 2015020031 (Student's Case). Student's complaint alleged, in pertinent part, in Issue Two, that although manifestation meetings have been held determining Student's behaviors to be a manifestation of her disability, she has been repeatedly removed from class.

On February 3, 2015, the Office of Administrative Hearings issued a Scheduling setting forth dual expedited and non-expedited due process hearing dates. The Scheduling Order set Student's Case for an expedited prehearing conference on February 20, 2015, an expedited due process hearing on February 24-26, 2015, a non-expedited prehearing conference on March 16, 2015, and a non-expedited due process hearing on March 26, 2015.

On February 12, 2015, District filed a Request for Due Process Hearing in OAH Case Number 2015020729, naming Student (District's Case). District's complaint alleged that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, and thus that it should be allowed to place Student into a proposed interim alternative educational setting for no more than 45 days. On February 17, 2015, OAH issued a Scheduling Order setting District's Case for an expedited prehearing conference on March 2, 2015, an expedited due process hearing on March 10-12, 2015, a non-expedited prehearing conference on March 9, 2015, and a non-expedited due process hearing on March 17, 2015.

On February 12, 2015, District filed a Motion to Consolidate and continue the cases. Student did not file a response to the motion. As discussed below, the Motion is denied

APPLICABLE LAW

When it is determined that behavior violating a code of student conduct was a manifestation of a student's disability, in the absence of certain defined special circumstances, the student is to be returned to the placement from which the child was

removed. (20 U.S.C. § 1415(k)(1)(F).) 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).) 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.*) In sum, a matter can only be continued if no issue is alleged that is subject to an expedited hearing, or if the student withdraws the issues in the complaint that triggered the expedited hearing.

A local educational agency that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, may request and is also entitled to receive an expedited due process hearing. (20 U.S.C. § 1415(k)(3)(A); 34 C.F.R. § 300.532(a) (2006).) The hearing officer may order a change in placement to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of such child is substantially likely to result in injury to the child or to others. (20 U.S.C. § 1415(k)(3)(B).)

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].)

DISCUSSION

Here, although Student's and District's cases involve common questions of fact, they involve distinct legal analyses subject to two different expedited time frames. Specifically, Student's complaint relates to changes in her educational placement notwithstanding that her behavior was a manifestation of her disability, and to disagreements with the decisions made at manifestation determination meetings. District's complaint alleges that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, and that it has proposed an appropriate interim alternative that it should be permitted to implement. The issues raised in the cases are subject to independent legal analyses and independent expedited time frames. Accordingly, although common facts are relevant to both cases, overall judicial economy is not served by consolidation. Thus, the motion must be denied.

ORDER

District's Motion to Consolidate and Continue is denied.

DATE: February 19, 2015

/s/

JUNE R. LEHRMAN
Administrative Law Judge
Office of Administrative Hearings