BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. MCCABE UNION ELEMENTARY SCHOOL DISTRICT,	OAH Case No. 2019040734
MCCABE UNION ELEMENTARY SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2019050092 ORDER GRANTING MOTION TO CONSOLIDATE AND DENYING MOTION TO CONTINUE

On April 17, 2019, Student filed with the Office of Administrative Hearings a Request for Due Process Hearing in OAH case number 2019040734 (Student's Case), naming McCabe Union Elementary School District. Student's case stated four issues with numerous sub-issues, alleging that McCabe Union procedurally and substantively denied Student a free appropriate public education during the 2017-2018 and 2018-19 school years by failing to fulfill its child-find obligation and failing to assess in all suspected areas of disability, including functional behavior and attention deficit hyperactivity disorder, failing to conduct legally adequate evaluations, failing to educate Student since February 12, 2019, incorrectly determining that Student's behavior was not substantially related to his disability; and failing to find him eligible for an IEP. The factual allegations revealed that on April 8, 2019, McCabe Union completed a manifestation determination and concluded that certain unspecified "wrongful behavior" did not result from Student's disability. Student's complaint also stated that Student has been out of school since February 12, 2019. As proposed resolutions, Student requested that expulsion proceedings be reversed and removed from his educational records.

On April 18, 2019, based on issues asserted in the complaint, OAH issued a Scheduling Order and Notice of Expedited and Non-Expedited Due Process Hearing and Mediation (Scheduling Order). The Scheduling Order set this matter for a mediation on May 9, 2019, Prehearing Conference on May 13, 2019, and Due Process Hearing on May 21-23

on the expedited issues, and Prehearing Conference on June 3, 2019, and Due Process Hearing on June 11-13 on the non-expedited issues.

On May 1, 2019, McCabe Union filed a Request for Due Process Hearing in OAH case number 2019050092 (District's Case), naming Student, alleging that its assessment of Student had been appropriate such that it should not be required to fund an independent educational evaluation. District's background facts stated that alleged behavioral incidents had occurred in January and February 2019, resulting in a suspension and recommended expulsion, a psycho-educational assessment, a resulting IEP meeting finding Student not eligible, and a manifestation determination. The sole issue presented by District's case is whether or not its assessment of Student had been appropriate such that it should not be required to fund an independent educational evaluation.

On May 1, 2019, McCabe Union filed a Motion to Consolidate District's Case with Student's Case and to continue the due process hearing date set in Student's Case. McCabe Union did not request any particular dates for a continuance. Student did not respond to the motion.

On May 2, 2019, OAH issued a Scheduling Order for District's Case, setting a Prehearing Conference on May 17, 2019, and a Due Process Hearing on May 29-30, 2019.

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].)

Here, the issues in District's Case and the non-expedited issues in Student's Case involve a common question of law or fact, specifically, the propriety of District's assessment of Student. Student does not oppose consolidation. In addition, consolidation furthers the interests of judicial economy because the witnesses and documents in each case will overlap. Accordingly, consolidation is granted. Student's Case shall be designated the primary case, and all dates in District's Case shall be vacated.

Continuance

A due process hearing must be held, and a decision rendered, within 45 days of receipt of the complaint, unless a continuance is granted for good cause. (Ed. Code, §§ 56502, subd. (f) & 56505, subd. (f)(1)(C)(3).) However, 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) .) 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.*) A matter can only be unexpedited or continued if no issue is alleged that is subject to an expedited hearing, if the student withdraws the issues in the complaint that triggered the expedited hearing, or if the student elects to challenge the change of placement under title 20, section 1415, subdivision (b)(6)(A) and not subdivision (k). (*Molina v. Bd. Of Educ. Of Los Lunas Schools* (D.N.M. 2016) 157 F.Supp.3d 1064, 1068-1071.)

District's motion to continue is denied. As a practical matter, consolidation will vacate the May 29-30, 2019 hearing dates in District's Case, and the common questions of law and fact will be at issue in the non-expedited hearing dates, June 11-13, 2019, currently set in Student's Case.

ORDER

1. McCabe Union's Motion to Consolidate is granted.
2. McCabe Union's Motion to Continue is denied.
3. The 45-day timeline for issuance of the decision in the consolidated cases shall be based on the date of the filing of the complaint in OAH Case Number 2019040734, Student's Case. All dates set in that case are confirmed: mediation on May 9, 2019, Prehearing Conference on May 13, 2019, and Due Process Hearing on May 21-23 on the expedited issues, and Prehearing Conference on June 3, 2019, and Due Process Hearing on June 11-13 on the non-expedited issues.
4. All dates previously set in District's Case, OAH Case No. 2019050092 are vacated. District's issue shall be considered at the Prehearing Conference on June 3, 2019, and the Due Process Hearing on June 11-13, 2019, with the non-expedited issues in Student's Case.

DATE: May 8, 2019

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June Lehrman
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JUNE LEHRMAN
Administrative Law Judge
Office of Administrative Hearings