BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. GOLETA UNION SCHOOL DISTRICT.	OAH Case No. 2017061183 ORDER DENYING MOTION TO STAY PROCEEDINGS

Student filed a Request for Due Process (complaint) with the Office of Administrative Hearings on June 26, 2017. On July 20, 2017, District filed a motion to stay the proceedings until a decision was reached in *Student v. Goleta Union School District* (2017) Cal.Ofc.Admin.Hrngs. Case No. 2017020596. Student filed an opposition on July 24, 2017.

APPLICABLE AUTHORITY

There are no statutory provisions governing a motion to stay the proceedings in a special education proceeding. Therefore, like other administrative agencies in similar situations, OAH looks to the Code of Civil Procedure for guidance. (See, e.g., *Brovelli v. Sup. Ct.* (1961) 56 Cal.2d 524, 530 (in the absence of Government Code provisions specifying the manner of service of a summons in an administrative investigation by the attorney general, the Court found it "reasonable to conclude that the process provided for in the Government Code is governed by the summons provisions of the Code of Civil Procedure insofar as appropriate.").)

Code of Civil Procedure section 187 provides that when a court has jurisdiction over a matter, it may adopt any suitable process or mode of proceeding that conforms with the spirit of the Code, if the Code is silent on the process.

When an action is brought in California that involves the same parties and the same subject matter as an action already pending in a court of another jurisdiction, the court has discretion to stay the California proceeding. (*Farmland Irrigation Co. v. Dopplmaier* (1957) 48 Cal.2d 208, 215.)

Although the Individuals with Disabilities Education Act is silent on motions to stay, it contains a section that modifies the general analysis with regard to res judicata and collateral estoppel. The IDEA specifically states that nothing in the Act shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed. (20 U.S.C. § 1415(o); 34 C.F.R. § 300.513(c) (2006); Ed Code, § 56509.) Therefore, although parties are precluded from relitigating issues

already heard in previous due process proceedings, parents are not precluded from filing a new due process complaint on issues that could have been raised and heard in the first case, but were not. Moreover, the IDEA is silent on whether or not the first case must be complete before a party files a second case.

Additionally, 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 for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances are disfavored. Good cause may include the unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances; substitution of an attorney when the substitution is required in the interests of justice; a party's excused inability to obtain essential testimony or other material evidence despite diligent efforts; or another significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. (See Cal. Rules of Court, rule 3.1332(c).) OAH considers all relevant facts and circumstances, including the proximity of the hearing date; previous continuances or delays; the length of continuance requested; the availability of other means to address the problem giving rise to the request; prejudice to a party or witness as a result of a continuance; the impact of granting a continuance on other pending hearings; whether trial counsel is engaged in another trial; whether the parties have stipulated to a continuance; whether the interests of justice are served by the continuance; and any other relevant fact or circumstance. (See Cal. Rules of Court, rule 3.1332(d).)

DISCUSSION

District's contends a stay in this case is appropriate because the issues raised in both this case and Student's first case, Case No. 2017020596, arise from the same transaction and ask OAH to determine if the August 16, and 22, 2016 individualized education programs provided Student a free appropriate public education. Student argues District confuses the issues and the two cases involve separate and distinct legal issues.

Student's first case, Case No. 2017020596, raises four issues. One, whether or not District denied Student a FAPE by denying Parent meaningful participation in the IEP team meetings held in August and September of 2016; specifically misinforming Parent about the law and facts regarding placement decisions, predetermining Student's placement, and failing to consider a less-restrictive environment. Two, whether or not District denied Student a FAPE from August 8, 2016, to the present by failing to offer appropriate goals that would indicate Student received more than de minimus educational benefit. Three, whether or not District denied Student a FAPE by failing to assess in all suspected areas of disability. And four, whether or not District denied Student a FAPE by failing to provide prior written notice regarding Student's requested placement in her home school with one-to-one aide support.

Student's second case, this case, raises two issues. One, whether or not District had a duty to file for due process to prove its offer of FAPE in the August 2016 IEP. And two, whether or not District's failure to file for due process denied Student a FAPE.

District asks for a stay to prevent inconsistency, and relies on *Student v. Garden Grove Unified School District* (March 2, 2012) Cal.Ofc.Admin.Hrngs. Case No. 2012020424 (Order granting motion to dismiss). However, Garden Grove does not address staying due process proceedings; OAH dismissed that case because the issues raised were completely litigated in a previous hearing.

District did not provide any authority that a stay is appropriate given that parties are permitted to file multiple complaints in the same venue. District cites to *Berg v. MTC Electronics Technologies* (1998) 61 Cal.App.4th 349, as authority to stay a case when the proceedings may have a collateral estoppel effect. However, in that case a stay was granted based on forum non conveniens, meaning there was a forum, or court, better suited to hear the case. Here, both of Student's cases are filed with OAH, and the IDEA allows parents to file multiple complaints. District also cites to *Guess?, Inc. v. Superior Court* (2000) 79 Cal.App.4th 553, to support its argument that a stay is appropriate, however, a stay was contemplated in that case because of possible arbitration. District also improperly cites *McMillin Development, Inc. v. Home Buyers Warranty* (1998) 68 Cal.App.4th 896, which again involves a stay pending an arbitration ordered by a federal district court in a related action. Lastly, District cites *Caiafa Prof. Law Corp. v. State Farm Fire & Cas. Co.* (1993) 15 Cal.App.4th 800, there a state court granted a stay when a similar matter was pending in federal court. This is again distinguishable from the instant case as both complaints are pending in front of OAH.

District's motion would have the effect of a continuance, however, District did not ask for a continuance nor did the parties agree to alternative dates.[1]

ORDER

1. District's motion for a stay of the proceedings is denied.

DATE: July 31, 2017

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Linda Johnson
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LINDA JOHNSON
Administrative Law Judge
Office of Administrative Hearings

[1] Nothing in this Order precludes the parties from filing a request for continuance.