BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS OF:

ETIWANDA SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT,

OAH CASE NUMBER 2020110498

and

PARENT ON BEHALF OF STUDENT,

v.

ETIWANDA SCHOOL DISTRICT,

OAH CASE NUMBER 2020120655

ORDER GRANTING MOTION TO CONSOLIDATE AND DENYING MOTION TO CONTINUE

DECEMBER 24, 2020

On November 17, 2020, Student filed with the Office of Administrative Hearings a Request for Due Process Hearing in OAH case number 2020110498, Student's Case, naming Etiwanda School District.

On December 18, 2020, Etiwanda School District filed a Request for Due Process Hearing in OAH case number 2020120655, Etiwanda's Case, naming Parents on Student's behalf. Etiwanda also filed a Motion to Consolidate Student's Case with Etiwanda's Case, and to continue the due process hearing, on December 18, 2020.

On December 23, 2020, Student's counsel of record in Student's Case filed on opposition to Etiwanda's motion to continue. However, the opposition was filed in Student's Case No. 2020110498 rather than in Etiwanda's Case. The opposition included argument regarding Etiwanda's motion to consolidate in Etiwanda's Case.

Student has not filed a notice of representation in Etiwanda's Case as of this date and is not currently represented by counsel in OAH case number 2020120655. However, OAH will take official notice of the opposition to the motion to continue filed in Student's Case, as this Order will impact Student's Case with respect to the hearing dates in both cases.

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 and/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].)

Here, Student's Case and Etiwanda's Case involve a common question of law or fact. Both cases address whether Etiwanda's July 2020 individualized education program offered Student a free appropriate public education. Etiwanda's Case also seeks an order permitting it to assess Student. Student's Case raises claims that Etiwanda failed to assess Student.

Student argues that Student's Case and Etiwanda's Case involve two different students of different ages, grades and needs. However, Student apparently confuses two cases involving Student with two cases involving a sibling. Two other cases are pending before OAH that involve a sibling and Etiwanda. Etiwanda also moved to consolidate the sibling's case and Etiwanda's case naming Parent's on behalf of the sibling. This Order addresses only the motion to consolidate Student's Case, OAH case number 2020110498, and Etiwanda's Case, OAH case number 2020120655, naming Parents on behalf of this Student. Therefore, the opposition to consolidation on the grounds Etiwanda seeks to consolidate matters concerning different students is not persuasive.

Consolidation of the two cases at issue in this motion furthers the interests of judicial economy because of common issues of law and fact that will involve the same or similar evidence and an overlap of witness testimony. Accordingly, consolidation of Student's Case and Etiwanda's Case is granted.

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. OAH considers all relevant facts and circumstances in determining whether good cause exists to grant an extension. (See Cal. Rules of Court, rule 3.1332(d).)

Both Student's Case and Etiwanda's Case are set for a prehearing conference on January 4, 2021, and due process hearing on January 12, 2021. Etiwanda seeks a continuance of the hearing on the consolidated matters to March 16, 2021.

Etiwanda's counsel asserts in its declaration that its counsel has several due process hearings and mediations scheduled in January and February 2021, rendering its counsel potentially unavailable. Etiwanda's counsel also refers to an unscheduled non-specific surgery possibly at the end of January, which would not interfere with the currently set hearing dates. Etiwanda also asserts that its representatives have conflicts with one week in February 2021 and one week in March 2021. Those two weeks do not conflict with the currently set dates. Etiwanda contends a continuance will allow the parties the opportunity to mediate. Student opposes a continuance of the due process hearing to March 2021.

Etiwanda's counsel has not demonstrated good cause to continue the hearing to the middle of March 20201 solely based on its counsel's possible conflicts for future events that have not yet started or been scheduled. No actual conflict currently exists.

Etiwanda's request for continuance to the week of March 16, 2021 is denied without prejudice. The parties may file a request for continuance, upon a showing of good cause, including a request for mediation with mutually agreeable dates.

While Student is represented in Student's Case, Student has no counsel of record in Etiwanda's Case. If Student's counsel will represent Student in this consolidated matter, counsel shall file a Notice of Representation in Etiwanda's Case no later than December 29, 2020, or concurrently with Student's prehearing conference statement.

ORDER

1. Etiwanda's Motion to Consolidate is granted.
2. Etiwanda's Case is designated as the primary case. All dates previously set in Student's Case, OAH case number 2020110498, are vacated.
3. Etiwanda's Motion to Continue is denied without prejudice. The consolidated matters shall proceed on the dates previously set for hearing in Etiwanda's Case, OAH Case Number 2020120655.
4. The prehearing conference in the consolidated matters shall take place on January 4, 2021, at 3:00 p.m. The due process hearing in the consolidated matters shall take place on January 12, 13, and 14, 2021, unless otherwise ordered. The parties shall comply with the Scheduling Order issued in Etiwanda's Case.
5. Student's counsel shall file a Notice of Representation in Etiwanda's Case on or before December 29, 2020.
6. 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 Etiwanda's Case, OAH case number 2020120655.

Adrienne L. Krikorian

Adrienne L. Krikorian
Administrative Law Judge
Office of Administrative Hearings