BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:

PARENTS ON BEHALF OF STUDENT,

and

KERN HIGH SCHOOL DISTRICT,

OAH CASE NUMBER 2024080863

OAH CASE NUMBER 2024080626

ORDER GRANTING MOTION TO CONSOLIDATE AND DENYING MOTION TO CONTINUE

AUGUST 26, 2024

On August 12, 2024, Kern High School District, called Kern High School, filed a due process hearing request with the Office of Administrative Hearings in case number 2024080626, Kern High School's Case, naming Student. The Office of Administrative Hearings is called OAH. The due process hearing in Kern High School's case is scheduled for September 4 and 5, 2024.

On August 21, 2024, Parents on behalf of Student filed a due process hearing request in OAH case number 2024080863, Student's Case, naming Kern High School. On August 22, 2024, Student filed a motion to consolidate cases. Student requested

that the case proceed on the dates scheduled in Kern High School's case. Student requested the hearings date be continued from September 4 through 5, 2024, to September 17 through 19, 2024.

On August 23, 2024, Kern High School filed a statement of non-opposition to Student's motion to consolidate. Kern High School opposed Student's request to start the due process hearing on September 17, 2024, and requested the hearing commence on October 8, 2024, as set forth in OAH's Scheduling Order in Student's Case.

CONSOLIDATION

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].)

Kern High School contends it conducted a legally appropriate three-year evaluation for Student in psychoeducation, functional behavior, educationally related mental health services, speech and language, and occupational therapy and reviewed the assessments in a January 17, 2024 IEP team meeting, which continued on February 6 and 14, and April 10, 2024. Kern High School contends the IEP team determined Student no longer met eligibility for special education. Kern High School seeks an order permitting it to exit Student from special education without parental consent.

Student contends he continues to qualify for special education and requests independent educational evaluations in psychoeducation and speech and language. Kern High School does not oppose the consolidation motion.

Here, both cases involve a common question of law or fact, specifically, whether Student continues to meet eligibility criteria as a student with disabilities under the Individuals with Disabilities Education Act. Further, consolidation furthers the interests of judicial economy because both cases involve the same parties and many of the same witnesses will be required to testify. Therefore, consolidation is granted.

When consolidating cases, OAH designates the statutory timelines applicable to the consolidated matters to be controlled by one of the cases. Here, the statutory timeline shall be based on Student's Case, OAH case number 2024080863.

CONTINUANCE

OAH must conduct a due process hearing and issue a decision within 45 days of receiving the due process complaint unless an extension is granted. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) Resolving the due process hearing quickly is legally required. Hearings may only be continued if "good cause" is established. (Ed. Code, § 56505, subd. (f)(3).) OAH considers all relevant facts and circumstances in determining whether good cause exists to grant a continuance. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, rule 3.1332.)

Prior to the opportunity for a due process hearing, Kern High School is required to convene a meeting with Parents and the relevant members of Student's IEP team within 15 days of receiving notice of 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 participate in 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. § 300.519(b)(3).) Only if Kern High School has not resolved the complaint to Parents' satisfaction within 30 days of receiving the complaint, may a due process hearing occur. (20 U.S.C. § 1415(f)(1)(B)(ii).)

There is not good cause to continue Kern High School's Case. Neither 15 nor 30 days have passed since Kern High School received Student's complaint on August 21, 2024. Kern High School has not had the opportunity to convene a resolution session and the parties did not state that they waived participation in a resolution session. Further, Kern High School opposes starting the hearing on Student's requested dates. Starting the hearing on September 17, 2024, would not give Kern High School 30 days from the date they received Student's complaint to resolve the complaint to Parent's satisfaction. Therefore, Student's request for a continuance of Kern High School's Case is denied.

ORDER

1. Student's motion to consolidate is granted.
2. Student's Case, OAH case number 2024080863, is designated as the Primary Case.
3. Student's motion to continue the hearing scheduled in Kern High School's Case is denied. All dates previously set in Kern High School's Case, OAH case number 2024080626 are vacated.
4. The consolidated matters shall proceed on the dates set in Student's Case. The prehearing conference shall be held on September 30, 2024, at 3:00 PM. The due process hearing in the consolidated cases shall be held on October 8 through 10, 2024, beginning at 9:30 AM on all days, and

continuing day to day as needed at the discretion of the Administrative Law Judge.

5. 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 Student's Case, OAH case number 2024080863.

IT IS SO ORDERED.

Jennifer Kelly

Jennifer Kelly
Administrative Law Judge
Office of Administrative Hearings