BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:

MILPITAS UNIFIED SCHOOL DISTRICT,

and

PARENT ON BEHALF OF STUDENT.

OAH CASE NUMBER 2025060681

OAH CASE NUMBER 2025030762

ORDER GRANTING MILPITAS UNIFIED SCHOOL DISTRICT'S MOTIONS TO CONSOLIDATE CASES AND CONTINUE DUE PROCESS HEARING

JUNE 19, 2025

On March 19, 2025, Parent on behalf of Student filed a due process hearing request with the Office of Administrative Hearings, called OAH, in OAH case number 2025030762, Student's Case, naming Milpitas Unified School District, called Milpitas. On April 25, 2025, OAH issued an order granting the parties' joint request to schedule a videoconference mediation and continue the due process hearing. OAH scheduled the prehearing conference, called PHC, for May 23, 2025, and the due process hearing for June 3 through 5, 2025.

OAH held the PHC on May 23, 2025. Student and Milpitas were represented by their attorneys of record at the PHC. On June 2, 2025, Student's attorney of record filed a notice of withdrawal of representation. On June 2, 2025, Milpitas filed a motion for a two-week continuance of the due process hearing because it believed the parties had reached the terms of a settlement agreement and were in the process of obtaining signatures prior to Student's attorney of record's withdrawal.

On June 3, 2025, Milpitas and Parent appeared for the due process hearing. Prior to convening the due process hearing, the undersigned Administrative Law Judge, called ALJ, heard arguments on Milpitas's motion to continue. The ALJ determined Milpitas established good cause for a continuance of the due process hearing on the grounds it believed the parties had reached a settlement agreement. On June 3, 2025, OAH issued an order granting Milpitas's motion to continue and continued the due process hearing to July 8 through 10, 2025.

On June 17, 2025, Milpitas filed a due process hearing request in OAH case number 2025060681 naming Parent on behalf of Student, called Milpitas's case. The PHC in Milpitas's Case is scheduled for June 30, 2025, at 3:00 PM and the due process hearing is scheduled for July 8 through 10, 2025.

On June 17, 2025, Milpitas filed motions to consolidate Milpitas's and Student's Cases and continue the due process hearing in the consolidated cases. OAH did not receive responses from Student to the motions to consolidate cases and continue the due process hearing.

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, common questions 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, both cases involve a common question of law or fact, specifically, the appropriateness of Student's individualized education program, called IEP, during the 2024-2025 school year. Student alleges Milpitas failed to comprehensively assess him in all areas of suspected disability and offer Student appropriate goals, services, and placement in IEPs dated September 17, 2024 and November 20, 2024. Milpitas's Case seeks a determination that the November 20, 2024, IEP, as amended on June 13, 2025, offered Student a free appropriate public education.

Student's Case and Milpitas's Case involve common questions of law or fact, and accordingly consolidation is warranted. 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 in each proceeding. Therefore, Milpitas's motion to consolidate is granted.

When consolidating cases, OAH designates a case whose statutory timelines will apply to the consolidated matter. Here, the statutory timeline shall be controlled by Milpitas's Case, OAH case number 2025060681.

CONTINUANCE OF DUE PROCESS HEARING

On June 17, 2025, Milpitas filed a motion to continue the due process hearing in the consolidated cases. Milpitas's motion to continue was supported by a declaration under penalty of perjury by Milpitas's attorney of record.

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).) 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 is guided by the Administrative Procedure Act and the California Rules of Court when ruling on continuance motions. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, rule 3.1332.)

Good cause to continue a due process hearing may include:

- An essential lay or expert witness is unavailable because of death, illness, or other excusable circumstances;
- A party is unavailable because of death, illness, or other excusable circumstances;
- A party's attorney is unavailable because of death, illness, or other excusable circumstances;
- A new attorney substitutes in, but only if the party establishes that the substitution is required in the interests of justice;
- A new party is added, and the new party has not had a reasonable opportunity to prepare for trial, or other parties have not had a reasonable opportunity to prepare for trial regarding the new party's involvement
- A party is unable to obtain essential testimony, documents, or other material evidence despite diligent efforts; or
- The case has a significant and unexpected change which makes the case not ready for trial.

Generally, continuances are disfavored. (Cal. Rules of Court, rule 3.1332(c).)

Milpitas's motion demonstrated good cause for a continuance of the due process hearing based on the unavailability of Milpitas's attorney of record. Milpitas's attorney established she is unavailable to participate in the due process hearing on the currently scheduled dates of July 8 through 10, 2025, due to her primary care responsibilities for her elderly father. Milpitas's attorney declared her father had a recent major injury and she is responsible for providing him daily care through August 23, 2025. Milpitas requested a continuance of the due process hearing to August 26 through 28, 2025. Milpitas established good cause for a continuance of the due process hearing based on counsel's unavailability due to excusable circumstances. Accordingly, Milpitas's motion to continue is granted.

ORDER

1. Milpitas's motion to consolidate is granted.
2. Milpitas's Case, OAH case number 2025060681, is designated as the primary case. All dates previously set in Milpitas's Case are vacated.
3. Milpitas's motion to continue is granted. The PHC in the consolidated cases shall be held on August 18, 2025, at 3:00 PM, and the due process hearing in the consolidated cases shall be held on August 26 through 28, 2025, beginning at 9:30 AM on all days, and continuing day to day as needed at the discretion of the ALJ.

4. 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 Milpitas's Case, OAH case number 2025060681.

IT IS SO ORDERED.

Jennifer Kelly

Jennifer Kelly

Administrative Law Judge

Office of Administrative Hearings