BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: RIVERSIDE UNIFIED SCHOOL DISTRICT, v. STUDENT.	OAH Case No. 2017080966
PARENT ON BEHALF OF STUDENT, v. RIVERSIDE UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017040949 ORDER FOLLOWING PREHEARING CONFERENCE; ORDER GRANTING MOTION TO CONSOLIDATE AND CONTINUE

On August 25, 2017, a telephonic prehearing conference was held before Administrative Law Judge Alexa J. Hohensee, Office of Administrative Hearings. Louis P. Pilato, Attorney at Law, appeared on behalf of Student. Jack B. Clarke, Attorney at Law, appeared on behalf of Riverside Unified School District. The PHC was recorded.

Based upon discussion with the parties, the ALJ issues the following order:

1. Consolidation and Continuance. On April 21, 2017, Student filed a due process hearing request, OAH case number 2017040949, naming District (Student's case). On August 22, 2017, District filed a due process hearing request, OAH case number 2017080966, naming Student (District's case), with a concurrent motion to consolidate and continue the two hearings. At the PHC, Student stated that he had no objection to consolidation and a continuance.

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].)

The complaint in Student's case alleges that from February 2014, District denied Student a free appropriate public education by failing to assess Student, failing to offer Student a FAPE, and committing multiple procedural violations. District's case seeks an order that the individualized education program developed on October 14 and December 7, 2016, as amended on April 21, 2017, offered Student a FAPE. Student's case and District's case involve common questions of law or fact. In addition, consolidation furthers the interests of judicial economy as the same witnesses and evidence will be presented in both cases, and consolidation will avoid the duplication of time, expense and resources involved in having these matters proceed to hearing separately and the possibility of conflicting decisions. Accordingly, consolidation is granted. District's case is designated the primary case.

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).) This is the parties' first request for a continuance in District's case, and the short continuance sought provides the parties with time to prepare for a consolidated hearing, which constitutes a significant unanticipated change in the status of the case as a result of which the case is not ready for hearing. Accordingly, District's unopposed motion for continuance is granted for good cause shown, and the PHC and due process hearing are continued as set forth at Paragraph 2.

If the parties decide to mediate, they shall submit a joint request to OAH with a mutually agreed mediation date at least two weeks in advance of the date requested.

2. Hearing Dates, Times, and Location. The hearing is continued and shall take place on October 10-12, 2017, and continuing day to day, Monday through Thursday, at the discretion of the ALJ. The hearing shall begin at 9:30 a.m. the first day of the hearing and at 9:00 a.m. all other days, unless otherwise ordered.

The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure that the witnesses will be available to testify. A witness will not be regarded as unavailable for purposes of showing "good cause" to continue the hearing if the witness was not properly notified of the hearing date or properly subpoenaed, as applicable.

The hearing shall take place at the District's offices located at 5700 Arlington Avenue, Riverside, California 92504. District shall certify with OAH, prior to October 2, 2017, that the designated facility fully complies with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.), the Unruh Civil Rights Act (Civ. Code, § 51 et seq.), and all laws governing accessibility of government facilities to persons with disabilities.

3. Continued PHC. The telephonic PHC is continued to 3:00 p.m. on October 2, 2017. OAH will initiate the conference call. The parties shall file amended PHC statements, taking into account the consolidation of Student's and District's cases.

The parties are encouraged to review and shorten their witness and exhibit lists prior to the hearing, bearing in mind that evidence will be excluded if it is repetitive, cumulative, or insufficiently probative to justify the time it would take to hear. The ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony. Education Code, section 56505.1, subdivision (h), empowers the ALJ presiding at a due process hearing to set a reasonable limit on the length of the hearing after consideration of all of the following: (i) issues to be heard, (ii) complexity of facts to be proven, (iii) ability of the parties or their representatives to present their respective cases, and (iv) estimates of the parties as to the time needed to present their respective cases.

4. Settlement. The parties are encouraged to continue working together to reach an agreement before the rescheduled PHC. The parties shall inform OAH in writing immediately should they reach a settlement or otherwise resolve the dispute before the PHC. In addition, if a settlement is reached within one day of the rescheduled PHC, the parties shall also inform OAH of the settlement by telephone at (916) 263-0880.

5. Failure to comply with this order may result in the exclusion of evidence or other sanctions.

ORDER

1. District's motion to consolidate is granted.

2. All dates in Student's case, OAH case number 2017040949, are vacated.

3. District's motion to continue is granted.

4. The mediation scheduled in District's case is cancelled. The following dates are set in District's case for these consolidated matters: the parties shall participate in a prehearing conference on October 2, 2017 at 3:00 p.m., with OAH to initiate the call; the due process hearing on the consolidated cases shall be held on October 10-12, 2017, at 9:30 a.m. on the first day and 9:00 a.m. thereafter.

5. The 45-day timeline for issuance of the decision in the consolidated cases shall be based on the date of the filing of District's case, OAH case number 2017080966.

DATE: August 28, 2017

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Alexa Hohensee
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ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings