BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. NEWPORT-MESA UNIFIED SCHOOL DISTRICT,	OAH Case No. 2018120062
NEWPORT-MESA UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2019030320 ORDER FOLLOWING PREHEARING CONFERENCE; GRANTING MOTION TO CONSOLIDATE; GRANTING JOINT MOTION TO CONTINUE PREHEARING CONFERENCE AND DUE PROCESS HEARING; AND STAYING RULING ON MOTION IN LIMINE

On March 15, 2018, a telephonic prehearing conference was held before Administrative Law Judge Deborah Myers-Cregar, Office of Administrative Hearings. Kathleen Loyer, Attorney at Law, appeared on behalf of Student. Ms. Loyer represented she was making a special appearance of behalf of parents at the prehearing conference. The PHC was recorded.

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

Motion to Consolidate

On December 3, 2018, Student filed with the Office of Administrative Hearings a Request for Due Process Hearing in OAH case number 2018120062, Student's Case, naming Newport-Mesa Unified. On December 20, 2018, Student filed an Amended Due Process Request, determined to be timely by order of Presiding Judge Joy Redmon.

On March 8, 2019, Newport-Mesa Unified filed a Request for Due Process Hearing in OAH case number 2019030320 (Newport-Mesa Unified's Case), naming Student.

On March 12, 2019, Newport-Mesa Unified filed a Motion to Consolidate the two cases. At the Prehearing Conference, Ms. Loyer did not object to the motion to consolidate.

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].)

Here, Student's case claims that Newport-Mesa Unified denied him a free and appropriate public education during the June 21, 2018 Individualized Education Program by predetermining the speech and language services, by not having the occupational therapist present, by failing to develop appropriate present levels of performance and appropriate goals for speech and language and occupational therapy, among other issues. Newport-Mesa Unified's case seeks the right to assess Student in eight areas in preparation for his triennial IEP, as it requested consent from Parents beginning January 24, 2018 through February 12, 2019. These cases involve common question of law or fact, specifically, Student's need for updated assessments, his present levels of performance and appropriate goals, based upon what the IEP team knew at the time it developed his annual and Triennial IEP document during 2018 and 2019. Accordingly, consolidation is granted.

Joint Motion for Continuance

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).)

The parties joint motion to continue the hearing is based upon the recent consolidation of the cases, Student anticipating filing another amended complaint, Student's

need to file a prehearing conference statement, and ongoing negotiations to settle the case. OAH has reviewed the request for good cause and considered all relevant facts and circumstances. The request is granted.

ORDER

1. Newport-Mesa Unified's Motion to Consolidate is granted.

2. All dates previously set in OAH Case Number 2019030320 (Newport-Mesa Unified's case) are vacated.

3. The parties' joint Motion to Continue the hearing dates in OAH Case Number 2018120062 (Student's Case) is granted. This matter will be set as follows:

Mediation: Parties shall be given leave to request another mediation based upon the consolidation of the cases, as they did not request a mediation date during the Prehearing Conference, but anticipate the possibility of requesting one in the future.

Prehearing Conference: April 29, 2019, at 3:00 PM

Due Process Hearing: May 7, 8, and 9, 2019 at 9:30 AM, and continuing day to day, as needed at the discretion of the Administrative Law Judge. The Due Process Hearing shall take place at Newport-Mesa Unified's administrative offices, 2985 A. Bear Street, Costa Mesa, California, 92626

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 OAH Case Number 2018120062 [Student's Case].

5. 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 is not properly notified of the hearing date or properly subpoenaed, as applicable.

6. The ruling on Newport-Mesa Unified's Motion in Limine to strike 10 remedies requested by parents in their amended complaint shall be stayed until the next prehearing conference.

7. Settlement. The parties are encouraged to continue working together to reach an agreement before the due process hearing. The parties shall inform OAH in writing immediately should they reach a settlement or otherwise resolve the dispute before the scheduled hearing. In addition, if a settlement is reached within five days of the

scheduled start of the due process hearing, the parties shall also inform OAH of the settlement by telephone at (916) 263-0880.

IF A FULL AND FINAL WRITTEN SETTLEMENT AGREEMENT IS REACHED AFTER 5:00 P.M. THE DAY PRIOR TO HEARING, THE PARTIES SHALL LEAVE A VOICEMAIL MESSAGE REGARDING THE SETTLEMENT AT (916) 274-6035. THE PARTIES SHOULD ALSO LEAVE CONTACT INFORMATION SUCH AS CELLULAR PHONE NUMBERS OF EACH PARTY OR COUNSEL FOR EACH PARTY. THE PARTIES SHOULD SIMULTANEOUSLY EMAIL THE SIGNATURE PAGE OF THE SIGNED AGREEMENT OR A LETTER WITHDRAWING THE CASE TO THE OAH AT https://www.applications.dgsapps.dgs.ca.gov/oah/oahsftweb .

Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received by OAH. If an agreement in principle is reached, the parties should plan to attend the scheduled hearing unless different arrangements have been agreed upon by the assigned ALJ. The assigned ALJ will check for messages the evening prior to the hearing or the morning of the hearing.

If the matter settles subject to board approval, in addition to a signed copy of the signature page of the settlement agreement as noted above, the parties shall submit a request for a status conference and provide the date of the next board meeting. The hearing dates will not be cancelled without this information.

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

IT IS SO ORDERED.

DATE: March 15, 2019

DocuSigned by:
Deborah Myers-Cregar
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DEBORAH MYERS-CREGAR
Administrative Law Judge
Office of Administrative Hearings