BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT. v. SAN MATEO UNION HIGH SCHOOL DISTRICT.	OAH Case No. 2019050656 ORDER FOLLOWING PREHEARING CONFERENCE AND CONSOLIDATING CASES
SAN MATEO UNION HIGH SCHOOL DISTRICT. v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2019040589

On May 17, 2019, a telephonic prehearing conference was held before Administrative Law Judge Penelope Pahl, Office of Administrative Hearings. Gina Beltramo Attorney at Law, appeared on behalf of Student. Evan Goldsen, Attorney at Law, appeared on behalf of Student. The PHC was recorded.

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

1. Motion to Consolidate. At the time of the Prehearing Conference, Student's motion to consolidate was considered. Counsel for San Mateo opposed the motion orally.

This case was filed on April 15, 2019. At a prehearing conference convened on Monday, April 29, 2019, the case was continued to allow Student to acquire representation. On May 14, 2019, Student filed notice of representation accompanied by a complaint and a motion to consolidate his case with this District filed case. As the Student's case requires the observation of a resolution period, if consolidated, the dates for San Mateo's case would be vacated and the cases would follow the timeline for Student's case.

San Mateo opposed the consolidation on the grounds that the district would suffer prejudice in the form of continued payment of Student's private school tuition. San Mateo further argued that consolidation would make it difficult to ensure witnesses, who are available for the currently scheduled hearing dates, will be available for the July hearing

dates scheduled in Student's case. San Mateo's counsel noted that San Mateo High School District has summer holidays in July.

Student argued that San Mateo High was not financially prejudiced because Parents were paying the private school tuition themselves. The parties were given the opportunity to present confirmation of the source of the payments for Student's private school tuition prior to the ruling being issued on this motion. In a later filing, San Mateo acknowledged their error in asserting it was paying for Student's private school tuition.

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); Code of Civ. Proc., § 1048, subd. (a).) Consolidation, however, is not mandatory.

In this instance, District's case has been pending only since April 15, 2019. Parents have only recently acquired counsel. The evidence submitted by the parties indicates that Parents have been paying tuition for Student's private school, not district. Additionally, the commencement of a school's summer holidays does not constitute a basis for determining prejudice to a school district as to witness availability absent specific evidence of the unavailability of a particular witness due to prepaid travel plans, or other good cause. In this case, Student's case contests that the Individual Education Program San Mateo Union High School District offered to Student in August of 2018 provided Student with a free, appropriate public education. District's case asks OAH to evaluate whether the August 2018 IEP offered Student a FAPE. The cases involve common questions of law and fact, and while the determinations result in different remedies, the witnesses and evidence are going to be identical in many instances. Student also raises issues of failure to assess in all areas of disability and failure to properly assess, as well as denial of parental participation in the IEP process during the same school year. Adjudication of these issues will require testimony from many of the same witnesses who will testify about the August 2018 FAPE offer.

Having considered the balance of the equities on both sides and the judicial economy of combining the cases, Student's motion to consolidate is GRANTED.

2. Hearing Dates

a. All previously scheduled dates in San Mateo's case, OAH case number 2019040589 are hereby VACATED.

b. The case shall proceed on the dates stated in the Scheduling Order issued in Student's case, OAH case number 2019050656, which is designated the primary case.

c. 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 2019050656.

3. Other Prehearing Matters Deferred. All other prehearing matters for the consolidated cases are deferred to the prehearing conference scheduled in Student's case, OAH case number 2019050656.

4. 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 **.** IFTHE SETTLEMENT IS SUBJECT TO BOARD APPROVAL, THE LETTER SHALL CONTAIN THE DATE ON WHICH THE BOARD IS SCHEDULED TO CONSIDER THE SETTLEMENT AGREEMENT.

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.

IT IS SO ORDERED.

DATE: May 20, 2019

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Penelope S. Pahl
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PENELOPE S. PAHL
Administrative Law Judge
Office of Administrative Hearings