BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

SAN JOSE UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2020080468

ORDER DENYING MOTION TO CONSOLIDATE

AUGUST 21, 2020

On June 1, 2020, San Jose Unified School District filed with the Office of Administrative Hearings a Request for Due Process Hearing in OAH case number 2020080468, First Case, naming Student.

On August 18, 2020, Student filed a Request for Due Process Hearing in OAH case number 2020080468, Second Case, naming San Jose.

On August 18, 2020, Student filed a Motion to Consolidate First Case with Second Case. During the prehearing conference in First Case on August 21, 2020, San Jose orally opposed Student's motion.

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].)

Although First Case and Second Case involve a common question of law or fact, San Jose opposes consolidation unless Second Case was consolidated with First case and heard on the dates currently scheduled in First Case. The due process hearing in First Case commences on September 1, 2020. The due process hearing in Second Case does not commences until October 13, 2020. Student was not prepared to agree to hear Second Case on the dates set in First Case. On June 17, 2020, the parties jointly asked for a continuance in First Case to mediate and asked for the hearing to commence on September 1, 2020. Student could have filed Second Case earlier so both cases could have been heard on the dates previously requested in First Case as Student's late filing appears more to be an attempt to continue the hearing at the last moment. Consequently, Student's motion to consolidate is denied without prejudice. The parties are encouraged to work together to agree on mutually agreeable dates to hear both First Case and Second Case. If parties reach such an agreement they may submit a joint motion to consolidate and continue.

ORDER

1. Student's Motion to Consolidate is denied without prejudice. The parties may submit a joint motion to consolidate and continue if they can agree on hearing dates.

IT IS SO ORDERED.



Linda Johnson

Administrative Law Judge

Office of Administrative Hearings