BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. UPLAND UNIFIED SCHOOL DISTRICT,	OAH Case No. 2018120463
UPLAND UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2018120181 ORDER GRANTING MOTION TO CONSOLIDATE AND GRANTING MOTION TO CONTINUE

On December 5, 2018, Upland Unified School District filed with the Office of Administrative Hearings a request for due process hearing in OAH case number 2018120181, naming Student (Upland's case).

On December 13, 2018, Student filed with OAH a request for due process hearing in OAH case number 2018120463, naming Upland (Student's case).

On January 15, 2019, Upland filed a motion to consolidate Student's case with Upland's case.

On January 15, 2019, Upland filed a concurrent motion to continue the due process hearing in Student's case due to the unavailability of counsel, who is scheduled to be in hearing on an earlier-filed case that was continued to the days scheduled in Student's case. On January 16, 2019, Student filed an opposition on the grounds that Upland's counsel has a large firm and can assign another attorney to the currently scheduled hearing in this matter.

Consolidation

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 and Upland's case involve a common question of law or fact, specifically, whether Upland is entitled to assess Student pursuant to its March 5, 2018 assessment plan. In addition, consolidation furthers the interests of judicial economy because the same witnesses and evidence will be presented in both cases. Consolidation will avoid the duplication of time, expense and resources involved in having these matters proceed to hearing separately, and avoid the possibility of conflicting results. Accordingly, consolidation is granted.

Continuance

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).)

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 declaration of Upland's counsel establishes that the parties have a long due process history, that Upland's counsel is uniquely qualified to represent Upland in this matter, and that he is unavailable on the dates currently scheduled for hearing in Student's case due to the continuance of an earlier-filed case to those dates. However, no motion to continue has been filed in Upland's case, which was already continued to dates agreed upon by the parties at a prehearing conference, and the consolidated matters can be heard on those dates.

Upland's request to delay the hearing in the consolidated matters to the second day scheduled for hearing in Upland's case because an essential witness in not available on the first of two days scheduled for that hearing does not demonstrate good cause for delay. That one witness may testify out of order on the second day of hearing. Upland's motion to continue Student's case is granted, and the due process hearing will be continued to the dates currently set for hearing in Upland's case.

ORDER

1. Upland's motion to consolidate Student's case and Upland's case is granted. Student's case is primary.
2. Upland's motion to continue the due process hearing dates in Student's case is granted.
3. All dates previously set in OAH case number 2018120463 (Student's case) are vacated.
4. The dates in OAH case number 2018120463 (Student's case) for the consolidated matters are continued as follows: The consolidated prehearing conference shall take place at 1:00 p.m. on February 4, 2019. OAH will initiate the call. The due process hearing in the consolidated matters shall take place on February 20-21, 2019, at 9:30 a.m. on the first day and 9:00 a.m. after, and continuing day to day as needed at the discretion of the Administrative Law Judge.
5. 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 2018120463 (Student's case).

DATE: January 17, 2019

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