BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS OF:

PARENT ON BEHALF OF STUDENT,

v.

EXCEL ACADEMY CHARTER SCHOOL,

OAH CASE NUMBER 2020120723

and

EXCEL ACADEMY CHARTER SCHOOL,

v.

PARENT ON BEHALF OF STUDENT,

OAH CASE NUMBER 2020090917

ORDER GRANTING MOTION TO CONSOLIDATE

DECEMBER 24, 2020

On September 28, 2020, Excel Academy Charter School filed with the Office of Administrative Hearings, referred to as OAH, a Request for Due Process Hearing in OAH case number 2020090917, First Case, naming Student. OAH granted Excel Academy's motion to amend on November 19, 2020, and confirmed the previously ordered due process hearing dates of January 12, 13, and 14, 2021.

On December 21, 2020, Student filed a Request for Due Process Hearing in OAH case number 2020120723, Second Case, naming Excel Academy. OAH set the hearing in Second Case to commence on February 17, 2021.

On December 21, 2020, Student filed a Motion to Consolidate First Case with Second Case. On December 23, 2020, Excel Academy filed an objection to consolidation on the ground that consolidation would further delay the proceedings.

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].)

Here, First Case and Second Case involve a common question of law or fact, specifically, the appropriateness of the October 20, 2020 individualized education program, referred to as an IEP, and the September 15, 2020 assessment plan. Excel Academy alleges the October 20, 2020 IEP is appropriate and it should be allowed to implement it without parental consent. Excel also alleges it should be allowed to assess

Student pursuant to the September 15, 2020 assessment plan without parental consent. Student alleges Excel Academy committed numerous procedural violations regarding the October 20, 2020 IEP that denied Student a free appropriate public education. Student also argues Excel Academy's September 15, 2020 assessment plan is not appropriate because it seeks to assess Student virtually.

Although Excel Academy opposes consolidation, it admits there is significant overlap between three of Student's four issues and both of Excel Academy's issues. Excel Academy goes as far to say Student's overlapping issues could be heard with First Case, as they are procedural in nature and would be subsumed in Excel Academy's issues. While Excel Academy will need to prove the necessary procedural requirements in its case, Student would not receive a ruling on his issues if the two cases are not consolidated. In addition, consolidation furthers the interests of judicial economy because the issues are so similar the same witnesses would testify, much of the same evidence would be presented, and hearing the cases separately could lead to inconsistent rulings. The overlap in the two cases and the interests of judicial economy outweigh the one-month delay in hearing the cases. Accordingly, consolidation is granted.

ORDER

1. Student's Motion to Consolidate is granted.
2. Second Case is designated as the primary case. All dates previously set in First Case, OAH case number 2020090917, are vacated.
3. The Prehearing Conference in the consolidated cases shall be held on February 5, 2021, at 1:00 PM, and the Due Process Hearing in the consolidated cases shall commence on February 17, 2021.

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 Primary Case, OAH case number 2020120723.

IT IS SO ORDERED.

Linda Johnson

Linda Johnson

Administrative Law Judge

Office of Administrative Hearings