BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. ALAMEDA UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017090835 ORDER FOLLOWING PREHEARING CONFERENCE; DENYING STUDENT'S MOTION TO COMPEL; GRANTING ALAMEDA'S MOTION TO CONSOLIDATE; GRANTING MOTION TO BIFURCATE ISSUE OF STUDENT'S RESIDENCY; AND DENYING MOTION TO CONTINUE

On November 3, 2017, a telephonic prehearing conference was held before Administrative Law Judge Rita Defilippis, Office of Administrative Hearings. Nicole Hodge-Amey, Attorney at Law, appeared on behalf of Student. Lenore Silverman, Attorney at Law, appeared on behalf of Alameda Unified School District. The PHC was recorded.

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

1. Student's Motion to Compel. On October 31, 2017, Student filed a Motion to Compel Alameda to file a response to Student's due process complaint and to shift the burden of proof to Alameda in the event the Alameda did not provide a response to Student's due process complaint within 5 days of hearing. On October 31, 2017, Alameda filed a response to Student's Motion to Compel which included Alameda's response to Student's due process complaint. The Motion to Compel was discussed at the preliminary conference and was denied as the issue became moot upon Alameda's filing of the requested response to Student's due process complaint.

2. Alameda's Motion to Continue, Motion to Consolidate and Motion to Bifurcate the Issue of Residency. On November 1, 2017, Alameda filed a due process complaint, OAH case number 2017110120 (Alameda's Case) challenging residency of Student during the timeframe of the present case (Student's case). On November 1, 2017, Alameda filed a Request or Continuance in Student's case until after a decision is issued in Alameda's case. At the prehearing conference, Alameda made a Motion to Consolidate Case 2017110120 with Student's case and also requested bifurcation of the residency issue. Student opposed the Motion to Consolidate on the grounds that it would cause an undue delay in Student's case.

APPLICABLE LAW AND DISCUSSION

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].)

Alameda's case involves the issue of residency of Student during the timeframe involved in Student's case. Therefore there is a risk of inconsistent rulings. Having heard and considered the Parties' positions, the Motion to Consolidate Student's case, OAH Case number 2017090835, and Alameda's case, OAH case number 2017110120, is granted. Alameda's Motion to bifurcate the issue of Student's residency is also granted as the residency issue will be determinative of other issues in Student's case.

When consolidating cases, OAH designates the statutory timelines applicable to the consolidated matters to be controlled by one of the cases. Here, the statutory timelines shall be controlled by Alameda's complaint.

Because the motion to consolidate was granted and the issue of residency bifurcated, the motion to continue is denied as moot.

3. Scheduling of Consolidated Matters. All dates currently on calendar in case number 2017090835 are vacated.

The bifurcated matter pertaining to residency shall proceed on the dates scheduled for Alameda's case which are as follows: Mediation is scheduled for November 16, 2017, at 9:30 a.m.; the prehearing conference is scheduled for November 20, 2017; the due process hearing is scheduled for November 28, 2017 at 9:30 a.m., continuing day to day, Monday through Thursday, at the discretion of the ALJ.

At the conclusion of the hearing on the bifurcated residency issue, dates for the prehearing conference and due process hearing for the remaining issues will be determined.

All other issues are deferred for discussion at the prehearing conferences for

the bifurcated hearings.

IT IS SO ORDERED.

DATE: November 3, 2017

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Rita Defilippis
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RITA DEFILIPPIS
Administrative Law Judge
Office of Administrative Hearings