BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS OF:

PARENT ON BEHALF OF STUDENT,

v.

MANHATTAN BEACH UNIFIED SCHOOL DISTRICT,

OAH CASE NUMBER 2019100534

and

MANHATTAN BEACH UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT,

OAH CASE NUMBER 2019080889

ORDER GRANTING MOTION TO CONSOLIDATE

On August 23, 2019, Manhattan Beach Unified School District filed with the Office of Administrative Hearings, referred to as OAH, a Request for Due Process Hearing in OAH case number 2019080889, referred to as Manhattan Beach's case, naming Parent on Student's behalf.

On October 14, 2019, Mother on Student's behalf filed a Request for Due Process Hearing in OAH case number 2019100534, referred to as Student's Case, naming Manhattan Beach Unified School District.

Administrative Law Judge Adrienne L. Krikorian, referred to as ALJ, held a prehearing conference in Manhattan Beach's case on October 14, 2019. Father and Mother, who are divorced, appeared separately for Student. Mother informed the ALJ, Father and counsel for Manhattan Beach on the record that she was filing a motion to consolidate both cases. On October 15, 2019, Mother filed this motion, which is deemed timely.

On October 16, 2019, Father filed an objection to consolidation. On October 17, 2019, Manhattan Beach Unified filed an objection to consolidation. Both objections asserted that consolidation would delay Manhattan Beach's hearing, currently set for October 22 through 24, 2019, and resolution of its issues. Manhattan Beach further asserted that Mother's motion was filed at the eleventh hour in bad faith as a delay tactic in its case. Manhattan Beach attached a copy of a 2008 custody order to support its position that both parents shared educational decision making rights.

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].)

Manhattan Beach's case raises two issues. First, Manhattan Beach seeks a finding and order that its April 2019 assessment plan was appropriate such that it may assess Student pursuant to the plan without Mother's consent. Second, Manhattan Beach seeks a finding that its April 2019 individualized education program, referred to as IEP, offers Student a free appropriate public education, referred to as FAPE, in the least restrictive environment, such that it may implement the IEP if Student seeks an education from Manhattan Beach. Father does not oppose either issue.

Student's Case also raises two issues common to Manhattan Beach's case. First, Student seeks a finding that Manhattan Beach failed to timely assess Student since May 2015. Second, Student seeks a finding that Student's proposed April 2019 IEP denied Student a FAPE in the least restrictive environment. Student's proposed resolutions seek affirmative remedies of a publicly funded independent educational evaluation by a neuropsychologist, and a private school placement at public expense for Student.

The facts in both cases are similar and disputed. The issues are also similar. The issues will likely involve many of the same witnesses and documentary evidence. Student is entitled to a mandatory resolution session, unless waived in writing by both parties, before his case can go to hearing, precluding the parties from proceeding on both cases on the dates set for Manhattan Beach's Case. The outcome in Manhattan Beach's case, if heard first, could result in conflicting results with Student's Case, if separately decided.

Manhattan Beach argues that the motion is untimely. However, because Student's complaint was filed on October 14, 2019, and the parties had notice of this pending motion during the PHC, the ALJ did not prohibit Mother from filing the motion. Manhattan Beach also argues that the doctrine of collateral estoppel might preclude

one or both of the issues in Student's case. Because the issues in both cases are not identical, that argument is less persuasive, and premature.

For all the above reasons, consolidation furthers the interests of judicial economy, notwithstanding that it necessarily means delaying the hearing in Manhattan Beach's case. Accordingly, consolidation is granted.

ORDER

1. Manhattan Beach's Case, OAH case number 2019080889, is consolidated with Student's Case, OAH case number 2019100534.
2. All dates in Manhattan Beach's Case are vacated.
3. Student's Case is designated as the primary case. The forty-five-day timeline for the Decision in the consolidated matters shall be determined by the dates in Student's Case.
4. The prehearing conference and due process hearing in the consolidated matters will be heard on the dates stated in the Scheduling Order issued in Student's Case, unless otherwise ordered. Prehearing conference statements and prehearing motions shall be filed no later than three business days before the prehearing conference.

DATED: October 17, 2019

DocuSigned by:
Adrienne L. Krikorian
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Adrienne L. Krikorian
Administrative Law Judge
Office of Administrative Hearings