BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS OF:

PARENT ON BEHALF OF STUDENT,

v.

LONG BEACH UNIFIED SCHOOL DISTRICT,

OAH CASE NUMBER 2019080590

and

LONG BEACH UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT,

OAH CASE NUMBER 2019020665

ORDER GRANTING MOTION TO CONSOLIDATE AND GRANTING MOTION TO CONTINUE PREHEARING CONFERENCE AND HEARING

On February 19, 2019, Long Beach Unified School District filed with the Office of Administrative Hearings a Request for Due Process Hearing in OAH case number 2019020665, First Case, naming Student.

On August 14, 2019, Student filed a Request for Due Process Hearing in OAH case number 2019080590, Second Case, naming Long Beach.

On August 14, Student filed a Motion to Consolidate First Case with Second Case and to continue the due process hearing date set in First Case, OAH case number 2019020665. On August 19, Student filed an amended Motion to Consolidate the cases.

On August 19, 2019, Long Beach filed an objection to consolidation on the grounds that Long Beach would be prejudiced by any delay in the hearing of its case, and that the issues raised in Student's case were, in part, mirror images of the Long Beach case.

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 common questions of law or fact, specifically, the legal sufficiency of the assessments conducted by Long Beach, and whether Student should be exited from special education or not. Long Beach argues that the foregoing issues are so similar that no consolidation is warranted. However, this argument is without merit here because if, as Long Beach argues, the issues are a mirror image and tried together, one side will prevail which prevents the possibility of inconsistent rulings. Consolidation also furthers the interests of judicial economy

because of the congruence of many hearing witnesses and exhibits. Accordingly, consolidation is granted.

CONTINUANCE

A due process hearing must be conducted, and a decision rendered, within 45 days of receipt of the due process notice, unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances are disfavored. OAH considers all relevant facts and circumstances in determining whether good cause exists to grant an extension. (See Cal. Rules of Court, rule 3.1332(d).)

Student's motion to continue the hearing demonstrates good cause for a continuance, based on the fact that the continuance will occasion only a short, approximately six-week delay in the hearing dates, and the consolidation of the cases and the hearings promotes judicial economy and eliminates the possibility of inconsistent rulings. Accordingly, a continuance of the First Case to the dates in the Second Case dates is granted. However, the dates for the hearing of the consolidated cases are continued to October 15-17, 2019 to accommodate Long Beach's request to not schedule the hearing during the week of October 8-10, 2019. Long Beach also stated that its counsel is unavailable to conduct a hearing until January of 2020 based upon hearings in 19 matters over the consecutive weeks beginning September 4, 2019 through December 17, 2019. Long Beach's impacted schedule does not trump the IDEA requirements of a timely hearing in all due process matters. Accordingly, the hearing will proceed on the scheduled dates, absent evidence demonstrating substantial good cause to warrant a further continuance.

ORDER

1. Student's Motion to Consolidate is granted.
2. Second Case, OAH case number 2019080590, is designated as the primary case. All dates previously set in First Case, OAH case number 2019020665, are vacated.
3. Student's Motion to Continue is granted. The Prehearing Conference in the consolidated cases shall be held on October 4, 2019, at 3:00 PM, and the Due Process Hearing in the consolidated cases shall be held on October 15, 2019 through October 17, 2019, beginning at 9:30 AM on the first day, and 9:00 AM on all other days, continuing day to day as needed at the discretion of the Administrative Law Judge.
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 2019080590.

IT IS SO ORDERED.

DATED: August 21, 2019

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Ted Mann
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Ted Mann
Administrative Law Judge
Office of Administrative Hearings