**BEFORE THE**
**OFFICE OF ADMINISTRATIVE HEARINGS**
**STATE OF CALIFORNIA**

# IN THE CONSOLIDATED MATTERS OF:

# PARENT ON BEHALF OF STUDENT,

**v.**

# GARDEN GROVE UNIFIED SCHOOL DISTRICT,

# OAH CASE NUMBER 2019080131

**and**

# GARDEN GROVE UNIFIED SCHOOL DISTRICT,

**v.**

# PARENT ON BEHALF OF STUDENT,

# OAH CASE NUMBER 2019070453

## ORDER GRANTING MOTION TO CONSOLIDATE AND GRANTING MOTION TO CONTINUE

On July 10, 2019, Garden Grove Unified School District filed with the Office of Administrative Hearings a Request for Due Process Hearing in OAH case number 2019070453, First Case, naming Parent on behalf of Student.

On August 5, 2019, Parent on behalf of Student filed a Request for Due Process Hearing in OAH case number 2019080131, Second Case, naming Garden Grove.

On August 27, 2019, Garden Grove 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 2019070453.

On August 27, 2019, Student filed an objection to consolidation on the grounds that Garden Grove failed to properly participate in the resolution session and because she believes Garden Grove has repeatedly delayed the hearing of this matter.

## 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 concerning Student's initial assessment and her requests for independent assessments. In addition, consolidation furthers the interests of judicial economy because both cases concern the same time period and will involve the same witnesses. Consolidating the cases will allow a single hearing to decide both cases, substantially reducing the demands on the parties, witnesses, and the judicial system. Further, trying the cases separately raises the risk of inconsistent outcomes. 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).)

The First Case, filed by Garden Grove, was previously continued on July 25, 2019, at Garden Grove's request. The prehearing conference in that case was set for September 6, 2019, with hearing scheduled to begin on September 17, 2019. Student filed her action, the Second Case, on August 5, 2019. The prehearing conference in the Second Case is set for September 23, 2019, with hearing to start on October 1, 2019.

Garden Grove filed this Motion to Consolidate and Continue on August 27, 2019. District seeks a continuance from the October 1, 2019, start date to October 15, 2019, for the hearing of the consolidated cases on two grounds. Garden Grove's counsel is scheduled for hearing in a higher priority matter on the week of October 1 and Garden Grove and its counsel are scheduled for hearing in two higher priority matters on the following week. A matter having higher priority is one which was filed earlier than another case, as older cases should be heard before newer cases. Accordingly, Garden Grove's motion to continue the hearing demonstrates good cause for a brief continuance. Student's assertion that Garden Grove's law firm could assign another lawyer to try these cases is correct. However, Garden Grove's right to be represented by counsel of its choice outweighs the impact of a two week delay in the hearing. The requested continuance is granted.

## ORDER

1. Garden Grove's Motion to Consolidate is granted.
2. Second Case, filed by Student, is designated as the primary case. All dates previously set in First Case, OAH case number 2019070453, are vacated.
3. Garden Grove's Motion to Continue is granted. The Prehearing Conference in the consolidated cases shall be held on Monday, September 30, 2019, at 10:00 AM. The Due Process Hearing in the consolidated cases shall be held on October 15 through 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, filed by Student, OAH case number 2019080131.

## IT IS SO ORDERED.

DocuSigned by:
Chris Butchko
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DATED: August 29, 2019

Chris Butchko
Administrative Law Judge
Office of Administrative Hearings