

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS OF:
LOS ANGELES UNIFIED SCHOOL DISTRICT,

and

PARENTS ON BEHALF OF STUDENT,
OAH CASE NUMBER 2021060968
OAH CASE NUMBER 2021090142

ORDER GRANTING MOTION TO CONSOLIDATE AND
DENYING REQUEST TO RESET HEARING DATES

SEPTEMBER 9, 2021

On June 28, 2021, Los Angeles Unified School District filed with the Office of Administrative Hearings a Request for Due Process Hearing, called a complaint, in OAH case number 2021060968, First Case, naming Student.

On July 8, 2021, OAH granted the parties' request to participate in mediation on August 31, 2021, and continued the hearing in First Case to dates jointly proposed by the parties. On August 30, 2021, Student cancelled mediation with no explanation as to the reason for cancellation. The Prehearing Conference is scheduled for 10:00 AM, on October 15, 2021, and hearing on October 26 through 28, 2021.

On September 3, 2021, Parents on behalf of Student filed a complaint in OAH case number 2021090142, Second Case, naming Los Angeles Unified.

On September 3, 2021, Student filed a Motion to Consolidate First Case with Second Case, vacate the due process hearing dates set in First Case, OAH case number 2021060968, and use the dates in the scheduling order for Second Case, November 2 through 4, 2021.

On September 7, 2021, Los Angeles Unified filed an objection to consolidation, supported by declaration and exhibit, on the ground that the motion to consolidate is an attempt to unnecessarily delay the hearing in First Case. Los Angeles Unified further contends Student failed to establish a basis to consolidate the cases and to continue the consolidated cases. Los Angeles Unified argues in the alternative should OAH grant consolidation, that the consolidated matter proceed on the dates currently set in First 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 a common question of law or fact, specifically, whether Los Angeles Unified conducted legally compliant, comprehensive assessments of Student in the Spring of 2021. In addition, consolidation furthers the

interests of judicial economy because both cases involve the same evidence and testimony, and avoids inconsistent findings and orders by OAH. Accordingly, consolidation is granted. First Case is designated as the primary case and the consolidated cases shall proceed on the dates currently set in First Case, with hearing set to begin on October 26, 2021.

REQUEST TO RESET HEARING DATES

Student contends that the consolidated matter should proceed on the later set dates in Second Case to allow Student additional time to obtain expert opinion through an independent educational evaluation and to allow parties to participate in mediation. Los Angeles Unified contends Student failed to demonstrate why the hearing cannot proceed on the dates currently set in First Case, which are outside the 30-day resolution session window.

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 request to schedule the hearing on the consolidated matter on the later dates in Second Case fails to demonstrate good cause. Student failed to offer an explanation as to why Student cannot obtain an expert prior to hearing set to begin more than six weeks from the date of consolidation. Further, Student failed to explain why Student waited more than 60 days to make efforts to secure an expert, considering Parents had notified Los Angeles Unified on June 23, 2021, of Parents' intent to obtain

independent assessments and seek reimbursement from Los Angeles Unified for the assessments. Therefore, Student failed to establish good cause to reset the hearing dates in the consolidated matter for Student to obtain an expert.

Furthermore, Student's contention that later hearing dates are necessary to allow the parties to participate in mediation is unpersuasive. OAH granted the parties' request for a mediation. Student cancelled mediation. In addition, the parties have ample time to participate in mediation before the hearing set to begin on October 26, 2021. Therefore, postponing the hearing is not warranted to allow the parties to participate in mediation if they choose to do so. Accordingly, the motion to reset hearing dates is denied.

ORDER

1. Student's Motion to Consolidate is granted.
2. First Case is designated as the primary case. All dates previously set in Second Case, OAH case number 2021090142, are vacated.
3. Student's Motion to Reset Hearing Dates is denied. The consolidated matters shall proceed on the dates previously set for hearing in the primary case, OAH case number 2021060968. Any request to continue the hearing in the consolidated matter shall be supported by declaration establishing good cause.

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 the primary case, OAH case number 2021060968.

IT IS SO ORDERED.

Rommel P. Cruz

Rommel P. Cruz

Administrative Law Judge

Office of Administrative Hearings