

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

SAN DIEGO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021090562

OAH CASE NUMBER 2021050418

ORDER FOLLOWING PREHEARING CONFERENCE FOR
HEARING BY VIDEOCONFERENCE GRANTING MOTION TO
CONSOLIDATE, SET MEDIATION AND VACATE DUE
PROCESS HEARING DATES

SEPTEMBER 20, 2021

On September 20, 2021, Administrative Law Judge Deborah Myers-Cregar, Office of Administrative Hearings, held a prehearing conference by videoconference. The Administrative Law Judge is called an ALJ. The Office of Administrative Hearings is called OAH. The prehearing conference is called a PHC.

Parent appeared on behalf of Student. Julie Coates, Attorney at Law, appeared on behalf of San Diego Unified School District. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

MOTION TO CONSOLIDATE

On May 13, 2021, Student filed with the Office of Administrative Hearings a Request for Due Process Hearing in OAH case number 2021050418, First Case, naming San Diego Unified School District. Student filed two motions to amend the due process complaint on July 19, 2021, which were both granted. On September 17, 2021, Student filed a new due process complaint naming San Diego Unified School District and San Diego High School, OAH number 2021090562, Second Case, alleging the same and similar issues to the current due process request in 2021050418, and requesting a mediation. On September 17, 2021, San Diego Unified School District filed a motion to consolidate the two cases. At the prehearing conference, Parent agreed to the consolidation of the two matters.

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, Student's educational placement and program for the 2020-2021 school year and extended school year sessions. Student does not oppose the motion. In

addition, consolidation furthers the interests of judicial economy because the alleged failures to provide appropriate specialized academic instruction relate to common issues in both cases, and the evidence involves the same student and chronological facts. Additionally, San Diego High is dismissed as it is part of San Diego Unified School District. Accordingly, consolidation is granted.

MOTION FOR MEDIATION DATE

Student's request for due process contained a request for a mediation date. Both parties agreed to hold a mediation on the date previously scheduled as the first day of hearing, September 28, 2021. The request for a mediation is granted.

ISSUES AND PROPOSED RESOLUTIONS

The issues at the due process hearing, and proposed resolutions, as alleged in the original due process complaint, two amended complaints, and the new consolidated due process complaint, and as clarified by the parties and the ALJ during the PHC are:

ISSUES

1. Did San Diego deny Student a free and appropriate public education, called a FAPE, by not offering Student an appropriate placement in a non-public school for the 2020-2021 school year?
2. Did San Diego deny Student a FAPE by not offering appropriate post extended school year services in the summer, August 2021?
3. Did San Diego deny Student a FAPE by not offering appropriate speech and language services to meet Student's expressive and receptive needs?
4. Did San Diego offer Student timely placement after Student enrolled in September 2020?

5. Did San Diego conduct timely assessments between December 2020 and May 2021, including psychoeducation, speech and language, occupational therapy, health and adapted physical education?
6. Did San Diego deny Student a FAPE by failing to implement Student's April 30, 2021 Individualized Education Program, called an IEP, by not providing a one-to-one aide, or speech services, during summer extended school year session June 21 to July 31, 2021?
7. Did San Diego fail to implement Student's May 2, 2019, IEP by not providing a consistent one-to-one aide during the 2020-2021 school year?

ORDER INCLUDES ALL RULINGS

This Order includes all rulings made at the prehearing conference. Any discussion and conversation not referenced in this Order is not binding on the ALJ conducting the hearing and may not be relied upon by the parties. The parties should be aware that, at hearing, the ALJ conducting the hearing has discretion to reconsider any part of this Order.

ORDER

1. San Diego Unified School District's Motion to Consolidate is granted.
2. Second Case is designated as the primary case. All dates previously set in First Case, OAH case number 2021050418, are vacated.
3. 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 2021090562. No further continuances, amendments to pleadings or additional cases to be consolidated shall be permitted.

4. September 28, 2021, will be scheduled for a mediation date from 9:00 a.m. to 4:30 p.m.
5. San Diego High School is dismissed as a party.

IT IS SO ORDERED.

Deborah Myers Cregar

Deborah Myers-Cregar

Administrative Law Judge

Office of Administrative Hearings