

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS OF:
PARENT ON BEHALF OF STUDENT,

and

THE PREUSS SCHOOL UNIVERSITY OF CALIFORNIA SAN DIEGO,
OAH CASE NUMBER 2021070893
OAH CASE NUMBER 2021100740

ORDER GRANTING MOTION TO CONSOLIDATE AND
DENYING MOTION TO CONTINUE

OCTOBER 29, 2021

On July 27, 2021, Parents on behalf of Student filed with the Office of Administrative Hearings a Request for Due Process Hearing in OAH case number 2021070893, First Case, naming The Preuss School University of California San Diego, referred to as Preuss School. On August 24, 2021, OAH granted the parties continuance request so the parties could participate in mediation, which occurred on September 20, 2021

On October 22, 2021, Preuss School filed a Request for Due Process Hearing in OAH case number 2021100740, Second Case, naming Parents on behalf of Student.

On October 22, 2021, Preuss School 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 2021070893.

Student did not file a response to the motion.

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, whether Preuss School denied Student a free appropriate public education, known as FAPE, by among things, failing to timely place Student in a Residential Treatment Center. Student's complaint seeks as a resolution an order placing Student in a Residential Treatment Center with access to necessary supports, services and accommodations. Preuss School's complaint seeks a finding it is entitled to conduct assessments proposed in its August 9, 2021 assessment plan without parental consent in the areas of psychoeducation, speech and language and health and to receive signed authorizations from Parents for release of Student's pertinent medical information.

In addition, consolidation furthers the interests of judicial economy because both First Case and Second Case involve the same primary witnesses and documents and hearing the matters concurrently will avoid unnecessary costs, duplicative testimony and

the risk of inconsistent findings of fact. Accordingly, Preuss School's Motion for Consolidation is granted.

CONTINUANCE REQUEST

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).)

Preuss School's motion to continue the hearing fails to demonstrate good cause for a continuance. Preuss School alleges that it has been unable to obtain parental consent to its August 9, 2021 assessment plan. While Preuss School asserts that it requires additional time to prepare its case for hearing, it has had sufficient time due to commonality of factual and legal issues that warrant consolidation. Nothing in this order prevents Preuss School and Student from making a joint continuance request.

ORDER

1. Preuss School'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 2021100740 are vacated.
3. Preuss School's Motion to Continue is denied. Matter shall proceed on the dates in the August 24, 2021 order granting continuance.
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 2021070893.

IT IS SO ORDERED.

Jennifer Kelly

Jennifer Kelly

Administrative Law Judge

Office of Administrative Hearings