

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS OF:
PARENT ON BEHALF OF STUDENT

and

SAN JUAN UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021080835

OAH CASE NUMBER 2021100146

ORDER FOLLOWING PREHEARING CONFERENCE FOR
HEARING BY VIDEOCONFERENCE; ORDER
GRANTING CONSOLIDATION; AND ORDER
GRANTING CONTINUANCE

OCTOBER 11, 2021

On October 11, 2021, Administrative Law Judge Chris Butchko, 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.

Natashe Washington, Attorney at Law, appeared on behalf of Student.
Linda Simlick Attorney at Law, appeared on behalf of San Juan Unified School District
The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

MOTION TO CONSOLIDATE AND CONTINUANCE

Upon commencement of the PHC, the ALJ and counsel discussed the pending motion to consolidate San Juan's Case, OAH Case Number 2021100146, with a case filed by Student, OAH case number 2021080835.

On August 27, 2021, Student filed with OAH a Request for Due Process Hearing in OAH case number 2021080835, naming San Juan.

On October 6, 2021, San Juan filed a Request for Due Process Hearing in OAH case number 2021100146, naming Student.

On October 6, 2021, San Juan filed a Motion to Consolidate San Juan's case with Student's case, and requested that the consolidated matter continue on the dates set for San Juan's case.

At the PHC, counsel for Student stated that Student did not oppose the consolidation request and agreed to having the consolidated matters proceed on the dates set in San Juan's case.

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].)

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).)

Here, First Case and Second Case involve common questions of law or fact between the same parties during the same time period and would involve substantially similar sets of witnesses. Consolidation furthers the interests of judicial economy for the parties, witnesses, and OAH by allowing both matters to be resolved in a single hearing. Accordingly, consolidation is granted. Also, San Juan's request to continue this matter is granted as good cause was established by the parties.

ORDER

1. San Juan's Motion to Consolidate is granted.
2. Student's case, OAH case number 2021080835, is designated as primary. All future filings shall be made under that case number.
3. San Juan's continuance request is granted. All dates previously set in Student's case, OAH case number 2021080835, are vacated. The Prehearing Conference in the consolidated cases shall be held as scheduled in San Juan's case, on October 25, 2021, at 3:00 PM, and the Due Process Hearing in the consolidated cases shall be held as scheduled in San Juan's case, on November 3 through 4, 2021, beginning at 9:30 AM

on all days and 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 Student's Case, OAH case number 2021080835.

SETTLEMENT

The parties are encouraged to continue working together to reach an agreement before the due process hearing. The parties shall inform OAH in writing immediately if they reach a settlement or otherwise resolve the dispute before the scheduled hearing. In addition, if a settlement is reached within five days of the scheduled start of the due process hearing, the parties shall also inform OAH of the settlement by telephone at (916) 263-0880. At the same time, the parties should send the signature page of the signed agreement or a letter withdrawing the case to OAH at <https://www.applications.dgs.ca.gov/oah/oahsftweb>.

If a full and final written settlement agreement is reached after 4:00 PM the day prior to hearing, the parties shall leave a voicemail message regarding the settlement at (916) 274-6035. The parties should also leave contact information such as cellular phone numbers of each party or counsel for each party.

Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received and processed by OAH. If an agreement in principle is reached, the parties should plan to attend the scheduled hearing unless different arrangements have been agreed upon by the assigned ALJ. The assigned ALJ will check for messages before the hearing.

If the matter settles subject to board approval, in addition to a signed copy of the signature page of the settlement agreement, the parties shall provide the date of the next board meeting. The hearing dates will not be cancelled without this information.

IT IS SO ORDERED.

Chris Butchko

Chris Butchko

Administrative Law Judge

Office of Administrative Hearings