

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS OF:

PARENT ON BEHALF OF STUDENT,

and

DEL MAR UNIFIED SCHOOL DISTRICT,

OAH CASE NUMBER 2021060708

OAH CASE NUMBER 2021110007

ORDER GRANTING MOTION TO CONSOLIDATE AND

DENYING MOTION TO CONTINUE

NOVEMBER 5, 2021

On June 17, 2021, Student filed a Request for Due Process Hearing in OAH case number 2021060708, Student's Case, naming Del Mar Union School District as respondent.

On October 29, 2021, Del Mar Union School District filed a Request for Due Process Hearing in OAH case number 2021110007, Del Mar's Case, naming Student as respondent.

On October 29, 2021, Del Mar filed a Motion to Consolidate Student's Case with Del Mar's Case and to continue the due process hearing date set in Student's Case, OAH case number 2021060708. OAH did not receive a response to the motion from Student.

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) and Code of Civ. Proc., § 1048, subd. (a).)

Here, Student's Case and Del Mar's Case involve a common question of law or fact, specifically, whether Student's IEP as of June 3, 2021, offered or denied Student a free appropriate public education. In addition, consolidation furthers the interests of judicial economy because each case involves the same parties, and overlapping facts and issues. 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).)

Del Mar's motion to continue fails to demonstrate good cause for a continuance. The cases Del Mar has identified as a conflict for counsel were filed later than Student's case, consolidated here. Earlier filed cases take priority for hearing.

ORDER

1. Del Mar's Motion to Consolidate is granted.
2. Student's Case is designated as the primary case. The consolidated matter shall proceed on the dates scheduled in Student's case, OAH Case number 2021060708.
3. All dates previously set in Del Mar's Case, OAH case number 202111007, are vacated.
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 2021060708.
5. Del Mar's Motion to Continue is denied. The consolidated matters shall proceed on the dates previously set for hearing in Student's Case, OAH case number 2021060708.

IT IS SO ORDERED.

Marlo Nisperos

Marlo Nisperos

Administrative Law Judge

Office of Administrative Hearings