

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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

and

AVESON SCHOOL OF LEADERS AND
AVESON CHARTER SCHOOLS,
OAH CASE NUMBER 2021090785
OAH CASE NUMBER 2021100682

ORDER GRANTING MOTION TO CONSOLIDATE,
GRANTING MOTION TO CONTINUE, AND SETTING
MEDIATION, PREHEARING CONFERENCE, AND
DUE PROCESS HEARING

NOVEMBER 2, 2021

On September 23, 2021, Student filed with the Office of Administrative Hearings a Request for Due Process Hearing in OAH case number 2021090785, Student's Case, naming Aveson School of Leaders and Aveson Charter Schools.

On October 22, 2021, Aveson Charter Schools filed a Request for Due Process Hearing in OAH case number 2021100682, Charter's Case, naming Student.

On November 2, 2021, Aveson Charter Schools filed a Motion to Consolidate Student's Case with Charter's Case and to continue the due process hearing date to dates mutually agreed to by the parties, set forth in a separate joint motion to set mediation and continue the due process hearing. In Aveson Charter Schools' motion to consolidate, Aveson Charter Schools represented Student consented to consolidation and had agreed to mutually available dates for mediation and the due process hearing.

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, Student's Case and Charter's Case involve a common question of law or fact, specifically, the sufficiency of Aveson Charter Schools' March 18, 2020 psychoeducational assessment, and whether Aveson Charter Schools offered Student a free appropriate public education in the April 23, 2021 individualized education program. Accordingly, consolidation is granted.

CONTINUANCE USE IF CONTINUANCE REQUESTED

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).)

The parties' joint motion to continue the hearing demonstrates good cause for a continuance, based on setting a mediation.

ORDER

1. Aveson Charter Schools' Motion to Consolidate is granted.
2. Student's Case, OAH case number 2021090785, is designated as the primary case. All dates previously set in both cases are vacated.
3. The parties' joint Motion to Continue is granted. Mediation in the above-captioned case shall be held on December 2, 2021, at 9:00 AM, the Prehearing Conference in the consolidated cases shall be held on January 24, 2022, at 10:00AM, and the Due Process Hearing in the consolidated cases shall be held on February 1, 2, and 3, 2022, beginning at 9:30 AM on each day, 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 Primary Case, OAH case number 2021090785.

IT IS SO ORDERED.

Kara Hatfield

Kara Hatfield

Administrative Law Judge

Office of Administrative Hearings