

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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

and

MONTEREY PENINSULA UNIFIED SCHOOL DISTRICT,
OAH CASE NUMBER 2021100658
OAH CASE NUMBER 2021100595

ORDER GRANTING JOINT MOTION TO CONSOLIDATE;
ORDER GRANTING REQUEST FOR VIDEOCONFERENCE
MEDIATION AND CONTINUANCE OF DUE PROCESS
HEARING

NOVEMBER 3, 2021

On October 21, 2021, Monterey Peninsula Unified School District filed with the Office of Administrative Hearings a Request for Due Process Hearing in OAH case number 2021100595, First Case, naming Student. A Request for Due Process Hearing is referred to as a complaint.

On October 22, 2021, Parents on behalf of Student filed a complaint in OAH case number 2021100658, Second Case, naming Monterey Peninsula Unified.

On November 3, 2021, the parties filed a joint motion to consolidate First Case and Second Case, a request for mediation and a continuance of the consolidated cases.

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 a common question of law or fact, specifically, whether Monterey Peninsula Unified failed to conduct a legally compliant speech and language assessment of Student. In addition, consolidation furthers the interests of judicial economy because the same evidence and witnesses will be presented in both cases on the issue of whether Monterey Peninsula Unified's September 21, 2021 speech and language assessment met state and federal law requirements. Accordingly, consolidation is granted.

MEDIATION AND 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).)

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. The parties' request for mediation and continuance of the consolidated cases demonstrates good cause and is therefore, granted.

ORDER

1. The parties' Joint Motion to Consolidate is granted.
2. Second Case is designated as the primary case.
3. The parties' Joint Motion to Continue is granted and all dates previously set in both cases are vacated. Mediation in the above-captioned case shall be held on December 16, 2021, at 9:00 AM to 4:30 PM. Mediation will occur via telephone or video.
4. The Prehearing Conference in the consolidated cases shall be held on February 4, 2022, at 1:00 PM, and the Due Process Hearing in the consolidated cases shall be held on February 15, 16, and 17, 2022, beginning at 9:30 AM on all days unless otherwise ordered. The hearing shall continue day to day, as needed at the discretion of the Administrative Law Judge.
5. Participant information sheets for mediation and prehearing conference must be filed two business days prior to the date of the scheduled event.
6. Prehearing conference statements and motions are due to OAH no later than three business days before the prehearing conference or with a showing of good cause why it was not possible to file the motion by that date.

7. 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 Second Case, OAH case number 2021100658.

IT IS SO ORDERED.

Rommel P. Cruz

Rommel P. Cruz

Administrative Law Judge

Office of Administrative Hearings