

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021090040

ORDER DENYING MOTION TO CONSOLIDATE AND

GRANTING MOTION TO CONTINUE

DECEMBER 08, 2021

On August 30, 2021, Student filed with the Office of Administrative Hearings a Request for Due Process Hearing in OAH case number 2021090040, Student's Case One, naming Los Angeles Unified School District.

On December 6, 2021, Student filed a Request for Due Process Hearing in OAH case number 2021120198, Student's Case Two, naming Los Angeles.

On December 7, 2021, Student filed a Motion to Consolidate the cases and to continue the due process hearing date set in Student's Case One, OAH case number 2021090040.

On December 8, 2021, Los Angeles filed a non-opposition to Student's motions to consolidate and continuance.

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].)

While, Student's Cases One and Two involve allegations that Los Angeles denied Student a Free and Appropriate Public Education, known as a FAPE, regarding the May 6, 2021 and August 20, 2021 Individualized Education Programs, known as IEPs, Student's contentions do not involve a common question of law or fact. Specifically, Student's Case One involves whether Los Angeles failed to offer Student an educational program that met Student's unique needs that require one-to-one instructional support, educational therapy and counseling, while Student's Case Two involves the adequacy of Los Angeles transition assessment and individual transition plan and whether Los Angeles implemented the agreed upon portions of the August 20, 2021 IEP. Regarding, any concern about any conflicting factual or legal findings between the two hearings can be addressed through the application of collateral estoppel, which applies to final administrative decisions of OAH in special education matters, including final administrative decisions that are pending on appeal. (*Loof v. Upland Unified School Dist.* (C.D. Cal., Sept. 10, 2021, Case No. EDCV 21-556 JGB (SPx)) 2021 WL 4974797, **4-5.)

Finally, Student fails to explain why Student did not merely seek to amend Student's Case One as ample time existed between the November 3, 2021 mediation and December 3, 2021 Prehearing Conference, as Student's motion to consolidate acknowledges that the issues in Students Case Two are not included in Case One. (page 3, lines 19-22.) Accordingly, Student did not establish why Student's Cases One and Two should be consolidated.

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).)

Student's motion to continue the hearing demonstrates good cause for a continuance, based on the recent injury to Student's primary counsel and time required for co-counsel to get prepared for any hearing. While neither Student nor Los Angeles proposed dates for the continuance, OAH is inclined to grant the continuance now as the hearing is scheduled to start in less than a week, taking into consideration the dates set in Student's Case Two. The request for continuance is granted for good cause. All previously scheduled dates are vacated. The case shall proceed as follows:

Prehearing Videoconference: March 7, 2022, at 10:00 AM.

Due Process Hearing by Videoconference: March 15, 2022 through March 17, 2022.

The hearing shall begin at 9:30 AM each day and generally end at 3:30 PM, unless otherwise ordered. The hearing shall continue day to day, as needed at the discretion of the ALJ.

ORDER

1. Student's Motion to Consolidate is denied.
2. Student's Motion to Continue Student's Case One is granted. The Prehearing Conference in the consolidated cases shall be held on March 7, 2022, at 10:00 AM, and the Due Process Hearing in the consolidated cases shall be held on March 15, 2022 through March 17, 2022, beginning at 9:30 AM on all days, continuing day to day as needed at the discretion of the Administrative Law Judge.
3. All dates set in Student's Case Two are confirmed.

IT IS SO ORDERED.

Peter Paul Castillo

Peter Paul Castillo

Presiding Administrative Law Judge

Office of Administrative Hearings