

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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

and

PALM SPRINGS UNIFIED SCHOOL DISTRICT,
OAH CASE NUMBER 2023090652
OAH CASE NUMBER 2024010650

ORDER FOLLOWING PREHEARING CONFERENCE
GRANTING MOTION TO CONSOLIDATE AND
CONTINUANCE

JANUARY 29, 2024

On January 29, 2024, Administrative Law Judge Marlo Nisperos, Office of Administrative Hearings held a prehearing conference by videoconference. The Administrative Law Judge will be referred to as an ALJ. The prehearing conference will be referred to as a PHC. A. James Golfo, Attorney at Law, appeared on behalf of Student. Maria Gless, Attorney at Law, appeared on behalf of Palm Springs Unified School District. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

HEARING DATES, TIMES, AND LOCATION

On September 22, 2023, Parent on behalf of Student filed with the Office of Administrative Hearings a Request for Due Process Hearing in OAH case number 2023090652, Student's Case, naming Palm Springs Unified School District. On December 22, 2023, OAH granted Student's motion to amend the request for due process hearing, called a complaint.

On January 19, 2024, Palm Springs Unified School District filed a complaint with OAH in OAH case number 2024010650, Palm Springs's Case, naming Student.

On January 19, 2024, Palm Springs filed a Motion to Consolidate the cases. At the January 29, 2024 PHC, Student did not object to the motion.

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, both cases involve a common question of law or fact, specifically, whether occupational therapy services and speech and language services are required for Student to receive a free appropriate public education. Student did not oppose the motion. In addition, consolidation furthers the interests of judicial economy because the

matters involve the same parties, witnesses, and evidence. 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).)

Neither party requested a continuance of Student's matter currently scheduled for prehearing conference on January 29, 2024, and due process hearing on February 8, 2024. The consolidated matter is continued to permit the parties to file prehearing conference statements and to hold a prehearing conference to discuss the issues for the consolidated due process hearing.

All previously scheduled dates are vacated. The consolidated case shall proceed as follows:

PREHEARING CONFERENCE will be held on February 5, 2024, at 3:00 PM.

All other prehearing matters shall be addressed at the February 5, 2024, prehearing conference. All prehearing motions must be filed three business days before the PHC.

Due Process Hearing: February 13, through February 15, 2024.

The hearing will be conducted via telephone or videoconference and shall begin at 9:30 AM and end at 3:30 PM on all days, unless otherwise ordered. The hearing shall continue day to day at the discretion of the ALJ.

The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure that the witnesses will be available to testify. A witness will not be regarded as unavailable for purposes of showing "good cause" to continue the hearing if the witness is not properly notified of the hearing date or properly subpoenaed.

SETTLEMENT

The parties shall immediately inform OAH in writing if they reach a settlement or otherwise resolve the dispute before the scheduled hearing. If the parties reach a settlement 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.

If a full and final written settlement agreement is reached after 5:00 PM the day before the 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. 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>.

Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received 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.

FAILURE TO COMPLY

Failure to comply with this order may result in the exclusion of evidence or other sanctions.

ORDER

1. Palm Springs's Motion to Consolidate is granted.
2. Student's Case is designated as the primary case. All dates previously set in Student's Case, OAH case number 2023090652, are vacated.
3. The consolidated matter is continued. The Prehearing Conference in the consolidated cases shall be held on February 5, 2024, at 3:00 PM, and the Due Process Hearing in the consolidated cases shall be held on February 13, through February 15, 2024, beginning at 9:30 AM on all days, 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 2023090652.

IT IS SO ORDERED.

Marlo Nisperos

Marlo Nisperos

Administrative Law Judge

Office of Administrative Hearings