

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:

PARENT ON BEHALF OF STUDENT,

and

WALNUT CREEK SCHOOL DISTRICT,

OAH CASE NUMBER 2023120791

OAH CASE NUMBER 2024040594

ORDER GRANTING MOTION TO CONSOLIDATE,
DESIGNATING STUDENT CASE AS PRIMARY CASE, AND
GRANTING MOTION TO CONTINUE

APRIL 18, 2024

On December 19, 2023, Student filed with the Office of Administrative Hearings a Request for Due Process Hearing in OAH case number 2023120791, naming Walnut Creek School District. On January 5, 2024, OAH granted a notice of insufficiency by Walnut Creek as to Student's complaint. On January 22, 2024, Student filed an amended complaint. On January 29, 2024, Student filed a second amended complaint. On January 29, 2024, Walnut Creek filed a notice of insufficiency as to Student's second

amended complaint. On January 30, 2024, OAH determined four of Student's five issues sufficient. Student's Case is currently scheduled for hearing beginning April 30, 2024.

On April 15, 2024, Walnut Creek filed a Request for Due Process Hearing in OAH case number 2024040594, naming Student. Walnut Creek's Case is set for hearing beginning May 7, 2024.

On April 15, 2024, Walnut Creek filed a Motion to Consolidate the cases and a request to continue the due process hearing date set in Student's Case and proceed on the dates set in Walnut Creek's Case. On April 17, 2024, Student filed a non-opposition to the requests to consolidate and to continue. However, Student does not agree to the dates set in Walnut Creek's Case.

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].)

Student challenges Walnut Creek's offered placements and services during the 2022-2023 and 2023-2024 school years, and is seeking a private school placement. Walnut Creek seeks to defend its December 2023 individualized education program. Here, both cases involve a common question of law or fact, specifically, whether Walnut Creek offered Student an appropriate placement and services. As such, consolidation is warranted. In addition, consolidation furthers the interests of judicial economy because

both cases involve the same parties, and many of the same witnesses will be required to testify in each proceeding. Each matter will also involve the introduction of many of the same documents. Accordingly, consolidation is granted.

When consolidating cases, OAH designates the statutory timelines applicable to the consolidated matters to be controlled by one of the cases. Here, the statutory timeline shall be controlled by Student's Case, OAH Case Number 2023120791.

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).)

Walnut Creek requests that the consolidated matters proceed on the dates set in Walnut Creek's Case. This constitutes a request to continue the dates set in Student's Case. Student agrees a continuance is necessary to allow sufficient time to prepare for the additional issue raised by Walnut Creek. However, Student does not agree to the hearing schedule set in Walnut Creek's Case. Walnut Creek's motion to continue the hearing demonstrates good cause. Student has not provided any reasons for not proceeding on the dates set in Walnut Creek's Case. The consolidated matters will be continued to the dates set in Walnut Creek's Case. Given the length of time Student's Case has been pending, OAH will not be inclined to grant any further continuance absent evidence of exceptional circumstances.

ORDER

1. Walnut Creek's Motion to Consolidate is granted.
2. Student's Case is designated as the primary case.
3. Walnut Creek's motion to continue the dates set in Student's Case is granted. All dates previously set in Student's Case, OAH case number 2023120791, are vacated.
4. The consolidated matters shall now proceed on the dates set in Walnut Creek's Case, OAH case number 2024040594. The prehearing conference in the consolidated cases shall be held on April 29, 2024, at 1:00 PM. The due process hearing in the consolidated cases shall be held on May 7, 8, and 9, 2024, beginning at 9:30 AM on all days, continuing day to day as needed at the discretion of the Administrative Law Judge.
5. 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 2023120791.

IT IS SO ORDERED.

Theresa Ravandi

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Administrative Law Judge

Office of Administrative Hearings