

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:

PARENT ON BEHALF OF STUDENT,

and

SAN DIEGO UNIFIED SCHOOL DISTRICT,

OAH CASE NUMBER 2024090140

OAH CASE NUMBER 2024060965

ORDER GRANTING MOTION TO CONSOLIDATE AND
SCHEDULING PREHEARING CONFERENCE AND HEARING

SEPTEMBER 12, 2024

On June 27, 2024, San Diego Unified School District filed a Request for Due Process Hearing, also called a complaint, with the Office of Administrative Hearings in OAH case number 2024060965. San Diego's complaint named Parent on behalf of Student as respondent. On July 9, 2024, the parties' joint request to mediate the case and continue the hearing was granted. OAH granted self-represented Parent's request to reschedule the mediation on July 16, 2024. On July 29, 2024, Student's counsel filed a notice of representation. On August 5, 2024, OAH granted the parties' second joint request to reschedule the mediation. Mediation was scheduled for September 5, 2024.

On September 4, 2024, Student filed her own request for due process hearing in OAH case No. 2024090140 and cancelled the mediation the same day. On September 5, 2024, Student filed a motion to consolidate her complaint with San Diego's complaint. On September 6, 2024, a prehearing conference was held in District's case. Granting San Diego's request for more time to file a written opposition to the motion, the presiding ALJ did not rule on Student's consolidation motion to allow San Diego the three business days OAH generally grants for motion responses. San Diego opposed the motion on September 10, 2024. Student filed a reply to San Diego's opposition on September 11, 2024.

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].)

San Diego opposes this motion on the grounds that it is not timely and not necessary. San Diego does not believe the issue overlap requires separate hearings. Student asserts that failing to consolidate the cases could result in conflicting rulings.

BALANCING THE EQUITIES, CONSOLIDATION IS REQUIRED

Student's case raises issues of IEP predetermination and a denial of meaningful parental participation as well as failing to offer placement and services meeting Student's needs, failing to state accurate present levels of performance and failing to assess during the 2023-2024 school year. San Diego's case seeks a ruling determining

that the IEP offer made January 31, 2024, as amended on March 5, 2024, May 23, 2024, and June 12, 2024, offered Student a free, appropriate public education, or FAPE.

While San Diego's objection to the late motion filing is accurate, this technicality of timing cannot take precedence over an equitable opportunity for the case to be fairly determined as a whole. Student is correct that the overlapping issues could result in conflicting rulings on the facts. One determination could be made as to the IEP offer San Diego presents for review, while another could result from facts presented regarding the impact of that offer or the circumstances surrounding its development that are not considered when determining whether a District's IEP offer constitutes FAPE, such as predetermination or parental participation. It is possible that facts presented in separate cases could result in two conflicting decisions. This tribunal has an overarching interest in avoiding inconsistent rulings. Balancing the equities, including the potential impact on the parties of the possibility of conflicting rulings, consolidation will be granted.

HEARING TIMING MUST ALLOW FOR RESOLUTION

Student's motion failed to request a continuance in conjunction with the consolidation. When a student files a request for due process, a school district must be given the opportunity to resolve the complaint informally. (20 U.S.C. § 1415(f)(1)(B); 34 C.F.R. § 300.510; Ed. Code § 56501.5, subd. (a).) Consolidating Student's complaint with District's complaint, which is scheduled to begin hearing on September 17, 2024, does not allow compliance with these state and federal laws. Student offered no information that the resolution session had been waived in writing by the parties (Ed. Code § 56501.5, subd. (d)(1).) San Diego's opposition to the consolidation indicates they did not waive their right to a resolution period. Mediation was cancelled so that did not operate as an alternative means of resolution. (Ed. Code. § 56501.5, subd.(b).)

San Diego must be allowed a resolution session. San Diego's concern about delayed resolution is also an important consideration. Therefore, the case will be scheduled to allow hearing to proceed at the earliest possible date following conclusion of the resolution period required.

ORDER

1. Student's Motion to Consolidate is granted.
2. Student's Case, OAH Case No. 2024090140 is designated as the primary case.
3. All dates previously set in both cases are vacated.
4. The Prehearing Conference in the consolidated cases is now set for October 7, 2024, at 1:00 PM.
5. The consolidated Hearing is now set for October 15, 16, and 17, 2024.
6. 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 2024090140.

IT IS SO ORDERED.

Penelope Pahl

Penelope S. Pahl

Administrative Law Judge

Office of Administrative Hearings