BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS OF:

PARENTS ON BEHALF OF STUDENT,

v.

UPLAND UNIFIED SCHOOL DISTRICT,

OAH CASE NUMBERS 2019080542 AND 2020040245

and

UPLAND UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT,

OAH CASE NUMBER 2020010465

ORDER GRANTING MOTION TO CONSOLIDATE AND DENYING MOTION TO CONTINUE AS MOOT

MAY 4, 2020

On August 13, 2019, Student filed with the Office of Administrative Hearings, referred to as OAH, a Request for Due Process Hearing in OAH Case No. 2019080542, Student's First Case, naming Upland Unified School District. OAH granted Student's request to amend the complaint in Student's First Case on December 4, 2019. The amended complaint includes claims that Upland denied Student a free appropriate public education, called a FAPE, for the 2017-2018 school year and 2018 extended school year by failing to: convene a timely individualized education program, or IEP, team meeting, make a written offer of FAPE, properly respond to Parent's request for independent educational evaluations, provide legally required prior written notice, convene an IEP team meeting to review and consider Parent-provided assessments, and offer appropriate transition assessment and services.

On January 14, 2020, Upland filed a Request for Due Process Hearing in OAH Case No. 2020010465, Upland's Case, naming Student. Upland's Case includes claims for the same time period as Student's First Case, and alleges Student was not entitled to a FAPE because of an alleged unilateral parental private school placement and Parent's refusal to consent to Upland assessment of Student. Upland's Case also seeks a finding that the October 31, 2016 IEP offered Student a FAPE.

On January 16, 2020, OAH granted Upland's Motion to Consolidate its case with Student's First Case and to continue the due process hearing dates in the consolidated matter to the dates set in Upland's Case, OAH Case No. 2020010465.

Due to circumstances related to the novel coronavirus, COVID-19, pandemic and various governmental orders relating thereto, on March 20, 2020, OAH continued the prehearing conference and due process hearing in the consolidated case to dates to be determined.

On April 2, 2020, Student filed with OAH a Request for Due Process Hearing in OAH Case No. 2020040245, Student's Second Case, naming Upland. Student's Second Case includes claims related to the 2016-2017 school year, including whether Upland denied Student a FAPE in the October 31, 2016 IEP.

On April 30, 2020, Upland filed a Motion to Consolidate Student's Second Case, OAH Case No. 2020040245, and the consolidated case, OAH Case Nos. 2019080542 and 2020010465, and to continue the due process hearing to June 9, 10, and 11, 2020.

On May 1, 2020, Student filed a second motion to amend the complaint in Student's First Case. At least one of Student's additional claims stated in the Second Amended Complaint in Student's First Case was duplicative of a claim in Student's Second Case. However, during the prehearing conference held on May 4, 2020, Student represented other claims newly pleaded in the Second Amended Complaint in Student's First Case were not the same as the claims stated in Student's Second Case, and Student did not want to withdraw the claims in Student's Second Case and proceed only with the claims stated in Student's First Case, as contained in the Second Amended Complaint. Student did not oppose Upland's motion to consolidate Student's Second Case with Student's First Case, as stated in the Second Amended Complaint.

During the prehearing conference, OAH granted Student's second motion to amend the complaint in Student's First 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].)

Typically, when a student files two cases, as a student is entitled to do under title 20 United States Code section 1415(o), OAH does not consolidate the two student-filed cases because under that section, the student is entitled to separate hearings, unless the student amends one of the complaints to include all issues and dismisses the other complaint for the two cases to be heard in one hearing.

In this situation, Upland filed a case seeking a determination of whether it offered Student a FAPE in the October 31, 2016 IEP, and later Student filed her second case, raising claims that include whether Upland denied her a FAPE in the October 31, 2016 IEP. Therefore, the previously consolidated case and Student's Second Case involve common questions of law or fact, specifically whether Upland offered Student a FAPE in the October 31, 2016 IEP.

Student consented to consolidation of her two cases, there are common questions of law or fact between Upland's issues in the previously consolidated case and Student's Second Case, and consolidation furthers the interests of judicial economy because the parties will offer most of the same witnesses and documentary evidence at hearing. Therefore, consolidation is granted.

CONTINUANCE

OAH granted Student's second motion to amend the complaint in Student's First Case, resetting the timeline for the due process hearing. The dates for the due process hearing are now after the dates Upland proposed in its motion to continue the due process hearing, and Upland's motion is therefore denied as moot.

ORDER

1. Upland's Motion to Consolidate is granted.
2. Student's First Case remains designated as the Primary Case. All dates previously set in Student's Second Case, OAH case number 2020040245, are vacated.
3. The 45-day timeline for issuance of the decision in the consolidated cases shall be based on the date of the filing of the Second Amended Complaint in the Primary Case, OAH case number 2019080542.

IT IS SO ORDERED.

Kara Hatfield

Administrative Law Judge

Office of Administrative Hearings