BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: EDUCATIONAL RIGHTS HOLDERS ON BEHALF OF STUDENT, v. GARDEN GROVE UNIFIED SCHOOL DISTRICT,	OAH Case No. 2019051233
GARDEN GROVE UNIFIED SCHOOL DISTRICT, v. EDUCATIONAL RIGHTS HOLDERS ON BEHALF OF STUDENT.	OAH Case No. 2019030359 ORDER GRANTING REQUEST FOR RECONSIDERATION; ORDER GRANTING JOINT MOTION TO CONSOLIDATE AND SETTING MEDIATION

On March 8, 2019, Garden Grove Unified School District filed with the Office of Administrative Hearings a Request for Due Process Hearing in OAH case number 2019030359, Garden Grove Unified's Case, naming Student.

On March 11, 2019, Educational Rights Holder on behalf of Student filed a Request for Due Process Hearing in OAH case number 2019030400, Student's First Case, naming Garden Grove Unified.

On March 21, 2019, OAH consolidated Garden Grove Unified's Case with Student's First Case. On April 26, 2019, OAH issued an Order of Dismissal of Student's First Case based upon Student's withdrawal of his Request for Due Process Hearing.

On May 30, 2019, Educational Rights Holder on behalf of Student filed another Request for Due Process Hearing in OAH case number 2019051233, Student's Second Case, naming Garden Grove Unified. On June 7, 2019, Garden Grove Unified filed a Motion to Consolidate its case with Student's Second Case. Student did not file a response. On June 10, 2019, OAH denied Garden Grove Unified's motion to consolidate its case with Student's Second Case.

On June 11, 2019, Administrative Law Judge Rommel P. Cruz commenced the due process hearing in Garden Grove Unified's Case, OAH case number 2019030359. Present at the hearing was Tracy Petznick Johnson, attorney for Garden Grove Unified. Valerie Shedd, Assistant Superintendent, attended on behalf of Garden Grove Unified. Educational Rights Holder attended on behalf of Student. Educational Rights Holder was assisted by communication access real-time translation.

At the start of the hearing, the parties jointly moved to consolidate Garden Grove Unified's Case and Student's Second Case, which OAH will treat as a request to reconsider the June 10, 2019 order denying consolidation. The parties also requested to mediate both cases.

Reconsideration

OAH will generally reconsider a ruling upon a showing of new or different facts, circumstances, or law justifying reconsideration, when the party seeks reconsideration within a reasonable period of time. (See, e.g., Gov. Code, § 11521; Code Civ. Proc., § 1008.) The party seeking reconsideration may also be required to provide an explanation for its failure to previously provide the different facts, circumstances or law. (See *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1199-1200.)

At hearing, Student joined in the motion to consolidate Student's Second Case with Garden Grove Unified's Case and the parties requested an opportunity to mediate all issues in both cases, including the issue regarding the appropriateness of Garden Grove Unified's initial multidisciplinary assessments raised in both Student's Second Case and Garden Grove Unified's Case. Accordingly, the motion for reconsideration is granted.

Consolidation

Although no statute or regulation specifically provides a standard to be applied in deciding a motion to consolidate special education cases, OAH will generally consolidate matters that involve: a common question of law and/or fact; the same parties; 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].)

Upon reconsideration in these matters, Student's Second Case and Garden Grove Unified's Case involve a common question of law or fact, specifically, Student's second complaint contends that Garden Grove Unified's psychoeducational and speech and language assessments were inadequate and failed to assess Student in all areas of need.

Garden Grove Unified's complaint seeks to defend the appropriateness of its initial multidisciplinary assessments, which includes the psychoeducational and speech and language assessments Student is challenging. In addition, consolidation furthers the interests

of judicial economy because the same evidence and witnesses will be presented in both cases on the issues related to the appropriateness of the assessments. Accordingly, consolidation is granted.

Mediation

A school district must convene a meeting to discuss the issues raised in a due process complaint in order to attempt to resolve the dispute. (34 C.F.R. § 300.510(a)(1), (2); Ed. Code, § 56501.5, subd. (a).) This meeting is commonly known as a resolution session. A resolution session need not be held if the parent and school district agree in writing to waive it (*Id*. at § 300.510(a)(3)(i); § 56501.5, subd. (b)) or if the parent and school district agree to use mediation instead of a resolution session (*Id*. at § 300.510(a)(3)(ii); § 56501.5, subd. (b)). If the parties agree to waive the resolution session, the 45-day timeline for a due process hearing begins the day after the waiver. (*Id*. at § 300.510(c)(1); 56501.5, subd. (d)(1).) However, the timeline does not automatically begin if the parties agree to use mediation instead of a resolution session. (*Id.* at § 300.510(c); also see 56501.5, subd. (d).) In this case, the parties agree to use mediation instead of a resolution session and the hearing timeline is not moved forward.

ORDER

1. The parties' request for reconsideration is granted.
2. The Joint Motion to Consolidate is granted.
3. Student's Second Case is designated as the primary case. All dates previously set in Garden Grove Unified's Case, OAH case number 2019030359, are vacated. The consolidated matters shall proceed on the dates currently set in Student's Second Case, OAH case number 201905123. OAH will provide Educational Rights Holder with communication access real-time translation captioning service for hearing and text telephone, TTY, relay service to assist her during the telephonic prehearing conference.
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 Second Case, OAH case number 201905123.

5. The parties request to use mediation instead of a resolution session is granted. Mediation shall take place on **June 27, 2019, from 9:30 a.m. to 4:30 p.m.** Mediation shall take place at Garden Grove Unified's offices located at **10331 Stanford Avenue, Garden Grove, CA 92840**. OAH will provide Educational Rights Holder with communication access real-time translation captioning service for mediation.

DATE: June 13, 2019

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Rommel P. Cruz
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ROMMEL P. CRUZ
Administrative Law Judge
Office of Administrative Hearings