BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. ROSEVILLE JOINT UNION HIGH SCHOOL DISTRICT.	OAH Case No. 2018080362
ROSEVILLE JOINT UNION HIGH SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2018090756 ORDER GRANTING MOTION TO CONSOLIDATE AND DENYING MOTION TO ADVANCE

On August 7, 2018, Student filed with the Office of Administrative Hearings a request for due process hearing in OAH case number 2018080362 (Student's Case), naming Roseville Joint Union High School District. A prehearing conference was held in that case on September 24, 2018, and the case is set for hearing on October 2, 3 and 4, 2018.

On September 19, 2018, Roseville filed a request for due process hearing in OAH case number 2018090756 (District's Case), naming Student. On September 19, 2018, Roseville also filed a motion to consolidate the two cases and asked to have its case heard on dates already set in Student's case for hearing. District's case is set for a PHC on October 8, 2018, and the hearing is set to begin on October 16, 2018. Student did not file a response to the motion to consolidate.[1]

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

[1] During the PHC for Student's Case on September Student's attorney verbally opposed the request for consolidation, and was told he needed to file a written response no later than close of business September 25, 2018.

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].)

In her complaint Student alleges procedural violations beginning in early 2018, when Parents notified Roseville that Student would be entering high school in the fall of 2018, and asked for an IEP team meeting. Student is asking that Roseville be ordered to reimburse them for Student's placement at private school in Southern California. One of Student's claims is the failure of Roseville to conduct a timely triennial assessment of Student.

It its complaint, Roseville alleges that it recently attempted to assess Student at her private school, but the school was uncooperative, unreasonably limited the time Roseville personnel could observe Student in school, and purportedly told Student she did not need to cooperate with Roseville's assessors. Roseville's complaint is, in essence an affirmative defense of its alleged failure to conduct a triennial assessment of Student. Roseville is asking that OAH order Parents to produce Student for assessment in accordance with a July 2018 assessment plan, and not place conditions on the assessment.

Here, Student's Case and District's Case involve a common question of law or fact, specifically, whether Roseville failed to timely assess Student, or is excused from conducting a timely assessment due to the purported interference by Student's private school. In addition, consolidation furthers the interests of judicial economy because many of the same witnesses would be required to testify at two hearings if the motion to consolidate was not granted. 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 filed by a school district 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.) The 45-day time period begins for a Student-filed complaint after a 30-day resolution period has passed. (34 C.F.R. § 300.513(b) & (c); Ed. Code § 56501.5, subd. (d)(1).) Continuances are disfavored. Good cause may include the unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances; substitution of an attorney when the substitution is required in the interests of justice; a party's excused inability to obtain essential testimony or other material evidence despite diligent efforts; or another significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. (See Cal. Rules of Court, rule 3.1332(c).) OAH considers all relevant facts and circumstances, including the proximity of the hearing date; previous continuances or delays; the length of continuance requested; the availability of other means to address the problem giving rise to the request; prejudice to a party or witness as a result of a continuance; the impact of granting a continuance on other pending hearings; whether trial counsel is engaged in another trial; whether the parties have

stipulated to a continuance; whether the interests of justice are served by the continuance; and any other relevant fact or circumstance. (See Cal. Rules of Court, rule 3.1332(d).)

Roseville is asking that the due process hearing take place on the dates currently set for Student's Case. However, this does not give Student sufficient time to prepare for hearing in regards to District's Case, and to timely exchange documents in compliance with Education Code section 56505, subdivision (e)(7). Therefore, good cause is found to continue this matter for PHC and hearing on the consolidated cases to the dates scheduled for District's case. Roseville's request to advance the dates for hearing its case is denied.

ORDER

1. Roseville's Motion to Consolidate is granted. All dates previously set in OAH Case Number 2018080362 (Student's Case) are vacated.

2. Roseville's request to advance the dates for hearing its case is denied.

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 complaint in OAH Case Number 2018080362 (Student's Case).

4. The consolidated matter is continued and shall be heard on the dates in the scheduling order for District's Case.

IT IS SO ORDERED.

DATE: September 26, 2018

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Rebecca Freie
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REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings