BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS OF:

PARENT ON BEHALF OF STUDENT,

v.

SAN JOSE UNIFIED SCHOOL DISTRICT,

OAH CASE NUMBER 2020010825

and

SAN JOSE UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT,

OAH CASE NUMBER 2019101176

ORDER GRANTING MOTION TO CONSOLIDATE AND DESIGNATING STUDENT'S CASE AS PRIMARY

FEBRUARY 14, 2020

On October 29, 2019, San Jose Unified School District filed with the Office of Administrative Hearings, called OAH, a Request for Due Process Hearing in OAH case number 2019101176, naming Student. Having granted the parties' joint request to continue the matter, San Jose' Case is currently scheduled for hearing beginning March 3, 2020. San Jose's issue for hearing is whether it's current offer of an individualized education program or IEP constitutes a free appropriate public education or FAPE.

On January 23, 2020, Student filed a Request for Due Process Hearing in OAH case number 2020010825, naming San Jose. On February 5, 2020, OAH granted Student's motion to file an amended complaint. Student's Case is scheduled for hearing beginning April 1, 2020.

On February 11, 2020, Student filed a motion to consolidate the two matters.

On February 14, 2020, San Jose filed an opposition to consolidation. San Jose argues that many of Student's issues are merely a defense to its case. San Jose also contends that Student's additional issues regarding the appropriateness of assessments and its alleged failure to fund Student's request for an independent educational evaluation, or file for due process without undue delay, exceed the scope of San Jose' Case and raise additional issues as to whether a prior settlement agreement precludes these claims.

San Jose additional asserts that Student is engaging in delay tactics and acting in bad faith given that the parties recently obtained a continuance of another OAH matter that conflicted with the hearing dates set for San Jose' Case. San Jose contends any delay will result in prejudice as it has expended resources preparing for hearing and its witnesses are ready to proceed on the scheduled dates.

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].)

Here, Student has identified several issues regarding a substantive denial of FAPE for the 2019-2020 school year, including San Jose' failure to appropriately assess him and failure to offer an appropriate IEP and placement. Student also raises several procedural violations related to the current IEP offer and San Jose' failure to fund Parents' November 2019 request for an independent educational evaluation or timely file to defend its assessments. As such, both matters involve a common question of law and facts, specifically the appropriateness of the current IEP offer and underlying assessments. Therefore, 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. San Jose's argument that consolidation would impermissibly broaden the scope of the hearing is not persuasive. The undersigned appreciates the need to ensure that these matters proceed to hearing in an expeditious manner. However, having considered all the pleadings and circumstances in this case, the motion to consolidate is granted.

When consolidation 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. San Jose requests, in the event OAH grants consolidation, that the matters proceed to hearing on the dates set for San Jose's Case, namely March 3 through 6, 2020. However, this would conflict with the 30-day resolution period as Student's amended complaint was deemed filed on February 5, 2020.

ORDER

1. Student's Motion to Consolidate is granted.
2. Student's Case is designated as the primary case. All dates previously set in San Jose' Case, OAH case number 2019101176, are vacated.
3. The consolidated matters shall proceed on the dates scheduled in Student's Case, OAH case number 2020010825. The prehearing conference shall be held on March 27, 2020, at 1:00 p.m., and the due process hearing shall be held on April 1 through 2, 2020, beginning at 9:30 a.m. on the first day, and at 9:00 a.m. on all other days, continuing day to day as needed at the discretion of the Administrative Law Judge.

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 Case, OAH case number 2020010825.

IT IS SO ORDERED.



Theresa Ravandi

Administrative Law Judge

Office of Administrative Hearings