BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. MENIFEE UNION SCHOOL DISTRICT,	OAH Case No. 2017100838
MENIFEE UNION SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2017110585 ORDER GRANTING MOTION TO CONSOLIDATE AND CONTINUING TELEPHONIC PREHEARING CONFERENCE AND DUE PROCESS HEARING

On October 17, 2017, Student filed with the Office of Administrative Hearings a Request for Due Process Hearing in OAH case number 2017100838 (Student's Case), naming Menifee Union School District.

On November 15, 2017, District filed a Request for Due Process Hearing in OAH case number 2017110585 (District's Case), naming Student.

On November 15, 2017, District filed a Motion to Consolidate District's Case with Student's Case.

On November 20, 2017, Student filed an objection to consolidation on the ground that the District's Case did not involve common questions of law or fact and there was no risk of inconsistent rulings.

The parties argued the motion during the telephonic prehearing conference on November 20, 2017. The motion to consolidate was granted and the continuance was ordered on November 20, 2017 on the record during the PHC.

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].)

Here, Student's Case and District's Case do not overtly involve a common question of law or fact. However, District established that the testimony of the physical therapist, orthopedic itinerant teacher, and nurse regarding Student's abilities and limitations will be the same regarding the questions of fact in Student's Case about Student's abilities and challenges with respect to her need for physical education and (as well as versus) physical therapy, and the questions of fact in District's Case regarding the need for triennial reassessments specifically about Student's abilities and challenges with respect to physical education and physical therapy. Accordingly, consolidation is granted.

Continuance

A due process hearing must be held, and a decision rendered, within 45 days of receipt of the complaint, unless a continuance is granted for good cause. (Ed. Code, §§ 56502, subd. (f) & 56505, subd. (f)(1)(C)(3).)

There is good cause to continue the hearing of OAH case number 2017100838 (Student's Case) to afford District the opportunity to prepare to present its case in OAH case number 2017110585 (District's Case) during the consolidated due process hearing. Student's Case is continued for two weeks to the dates previously scheduled in District's case.

ORDER

1. District's Motion to Consolidate is granted.

2. All dates previously set in OAH Case Number 2017100838 [Student's Case] and OAH Case Number 2017110585 [District's Case] are vacated.

3. The consolidated cases are continued. The Prehearing Conference in the consolidated cases shall be held on December 4, 2017, at 3:00 p.m. and the Due Process Hearing in the consolidated cases shall be held on December 12, 13, 14, and 18, 2017, at 9:30 a.m. on the first day and on December 18, 2017, and at 9:00 a.m. on all other days, continuing day to day, Monday through Thursday, 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 OAH Case Number 2017100838 [Student's Case].

IT IS SO ORDERED.

DATE: November 21, 2017

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Kara Hatfield
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KARA HATFIELD
Administrative Law Judge
Office of Administrative Hearings