BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:

PARENT ON BEHALF OF STUDENT,

and

SAN DIEGO UNIFIED SCHOOL DISTRICT,

OAH CASE NUMBER 2022060241

OAH CASE NUMBER 2022020282

ORDER FOLLOWING PREHEARING CONFERENCE

GRANTING REQUEST FOR CONSOLIDATION

JUNE 14, 2022

On June 13, 2022, Administrative Law Judge Chris Butchko, Office of Administrative Hearings, held a telephonic prehearing conference. The Administrative Law Judge will be referred to as an ALJ. The prehearing conference will be referred to as a PHC. Jennifer Varga, Tania Prado, and Cecilia Rutherford, Attorneys at Law, appeared on behalf of Student. Jonathan Read, Attorney at Law, appeared on behalf of San Diego Unified School District. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

MOTION TO CONSOLIDATE AND CONTINUE

On February 8, 2022, Student filed with the Office of Administrative Hearings a Request for Due Process Hearing in OAH case number 2022020282, Student's Case, naming San Diego. Student subsequently amended his due process hearing request on May 4, 2022.

On June 8, 2022, San Diego filed a Request for Due Process Hearing in OAH case number 2022060241, San Diego's Case, naming Student.

On June 8, 2022, San Diego filed a motion to consolidate the cases and for the due process hearing to proceed on the dates in San Diego's Case. The motion was timely filed three days prior to the prehearing conference.

As of the date of this order, Student has not filed a response to the motion, but did orally oppose the motion at the prehearing conference.

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, both cases involve common questions of law or fact concerning the appropriateness of San Diego's offers of programs and services to meet Student's needs as made at the November 4, 2021, Individualized Educational Plan team meeting and amended through May 24, 2021. Resolving both complaints in one hearing will avoid

unnecessary costs and delay. In addition, consolidation furthers the interests of judicial economy by conserving the resources of the Office of Administrative Hearings and of the parties, as well as reducing the impact upon witnesses who would otherwise be called twice to testify. Accordingly, consolidation is granted. San Diego's Case is designated the primary case as hearing the consolidated cases on the dates set for San Diego's case will allow sufficient time for the parties to prepare for the hearing without introducing potentially excessive delay. All dates in Student Case are vacated.

SETTLEMENT

The parties shall immediately inform OAH in writing if they reach a settlement or otherwise resolve the dispute before the scheduled hearing. If the parties reach a settlement within five days of the scheduled start of the due process hearing, the parties shall also inform OAH of the settlement by telephone at (916) 263-0880.

If a full and final written settlement agreement is reached after 5:00 PM the day before the hearing, the parties shall leave a voicemail message regarding the settlement at (916) 274-6035. The parties should also leave contact information such as cellular phone numbers of each party or counsel for each party. At the same time, the parties should send the signature page of the signed agreement or a letter withdrawing the case to OAH at https://www.applications.dgs.ca.gov/oah/oahsftweb.

Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received by OAH. If an agreement in principle is reached, the parties should plan to attend the scheduled hearing unless different arrangements have been agreed upon by the assigned ALJ. The assigned ALJ will check for messages before the hearing.

If the matter settles subject to board approval, in addition to a signed copy of the signature page of the settlement agreement, the parties shall provide the date of the next board meeting. The hearing dates will not be cancelled without this information.

ALL OTHER PREHEARING CONFERENCE MATTERS

All other prehearing conference matters will be taken up at the resumption of the prehearing conference on June 27, 2022.

ORDER

1. San Diego's motion to consolidate is granted.
2. San Diego's Case is designated as the primary case and matter will proceed on the dates in San Diego's Case.
3. The Prehearing Conference in the consolidated cases shall be on June 27, 2022, at 1:00 PM, and the Due Process Hearing in the consolidated cases shall be held on July 6, 2022, through July 7, 2022, beginning at 9:30 AM on all 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 San Diego's Case, the primary case, OAH case number 2022060241.

The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure that the witnesses will be available to testify. A witness will not be regarded as unavailable for purposes of showing "good cause" to continue the hearing if the witness is not properly notified of the hearing date or properly subpoenaed.

FAILURE TO COMPLY

Failure to comply with this order may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

Chris Butchko

Chris Butchko
Administrative Law Judge
Office of Administrative Hearings