BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS OF:

PARENT ON BEHALF OF STUDENT,

v.

ETIWANDA SCHOOL DISTRICT,

OAH CASE NUMBER 2020120058

and

ETIWANDA SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT,

OAH CASE NUMBER 2020120669

ORDER GRANTING MOTION TO CONSOLIDATE AND DENYING WITHOUT PREJUDICE MOTION TO CONTINUE

DECEMBER 24, 2020

On November 30, 2020, Student filed with the Office of Administrative Hearings a Request for Due Process Hearing in OAH case number 2020120058, Student's Case, naming Etiwanda School District.

On December 18, 2020, Etiwanda filed a Request for Due Process Hearing in OAH case number 2020120669, District's Case, naming Student.

Also on December 18, 2020, Etiwanda filed a Motion to Consolidate Student's Case and District's Case and to continue the due process hearing date for the consolidated matter to March 30, 2021, based on the asserted unavailability of Etiwanda's attorney and representative on numerous future dates.

On December 23, 2020, Student filed an objection to consolidation contending that Etiwanda improperly seeks to consolidate "cases involv[ing] two different students, of different ages in different grades, with far different educational needs." Student's attorney completely misunderstands Etiwanda's motion. Etiwanda's Motion to Consolidate does not concern the two requests for due process hearing Parent filed in November 2020, one regarding each of two students. Etiwanda moved to consolidate the case Student filed against Etiwanda and the case Etiwanda filed against the same Student. Etiwanda's Motion to Consolidate does not in any way relate to the due process hearing request Parent filed regarding a different student.

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's Case and District's Case involve a common question of law or fact, specifically, whether Etiwanda offered Student a free appropriate public education in the August 4, 2020 individualized education program. 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, 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.) As a result, continuances are disfavored. OAH considers all relevant facts and circumstances in determining whether good cause exists to grant an extension. (See Cal. Rules of Court, rule 3.1332(d).)

Etiwanda's motion to continue the hearing fails to demonstrate good cause for a continuance at this time. Etiwanda may meet and confer with Student regarding mutually agreeable dates for a continuance, and may move for a continuance at a future date based upon the availability of counsel, representatives, and witnesses when actual conflicts with the dates scheduled for hearing arise.

ORDER

1. Etiwanda's Motion to Consolidate is granted.
2. Student's Case is designated as the primary case. All dates previously set in District's Case, OAH case number 2020120669, are vacated.
3. Etiwanda's Motion to Continue is denied without prejudice. The consolidated matter will proceed on the dates currently set in Student's Case, OAH case number 2020120058. The prehearing conference date is January 15, 2021, at 10:00 AM. The due process hearing dates are January 26, 27, and 28, 2021.
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 Primary Case, OAH case number 2020120058.

IT IS SO ORDERED.

Kara Hatfield

Kara Hatfield

Administrative Law Judge

Office of Administrative Hearings