BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS OF:

PARENT ON BEHALF OF STUDENT,

v.

ROSEDALE UNION SCHOOL DISTRICT AND KERN COUNTY SUPERINTENDENT OF SCHOOLS

OAH CASE NUMBER 2019100374

and

ROSEDALE UNION SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT,

OAH CASE NUMBER 2019110885

# ORDER GRANTING MOTION TO CONSOLIDATE AND CONTINUNACE OF DUE PROCESS HEARING

On October 9, 2019 Student filed a Request for Due Process Hearing with the Office of Administrative Hearings in case number 2019100374, naming Rosedale Union School District and Kern County Superintendent of Schools referred to collectively as Respondents. Office of Administrative Hearings is referred to as OAH. OAH set Student's Case for hearing on December 3, 2019.

On November 19, 2019, Respondents jointly moved to continue the December 3, 2019 due process hearing to the first week of February 2020 on the grounds that Rosedale's counsel was ill and under a doctor's care. In addition, Kern County counsel was unavailable for several reasons. Counsel is scheduled to attend a prepaid conference from December 4 to December 6, 2019, is working on an appellate brief, had very sick child causing counsel to miss work, and there are no other counsel in her office available to handle this case.

On November 20, 2019, Student filed opposition to the continuance on the grounds on that Respondents' counsel knew about the hearing dates since October 2019 and failed to meet and confer before filing the motion. Student argued that the motion was frivolous, that a further delay in assessments and services prejudiced Student, Student already served two witnesses with subpoenas, and Student's counsel was unavailable until late February 2020. Student's attorney requested unspecified sanctions against Respondents' counsel.

On November 21, 2019, Rosedale filed a Request for Due Process Hearing in OAH case number 2019110885, District's Case, naming Student. OAH set District's Case for hearing beginning December 17, 2019.

On November 21, 2019, Rosedale filed a Motion to Consolidate Student's Case with District's Case.

On November 22, 2019, Student filed an opposition to the motion to consolidate on the grounds that the cases involve different issues, any delay will be prejudicial, and Student will not have adequate time to prepare for and defend District's Case.

On November 22 and November 25, 2019, OAH held a prehearing conference in Student's Case. The parties were permitted to present oral argument regarding the motion to consolidate and the motion to continue. Kern County did not oppose consolidation. Student's counsel opposed consolidation, stated that she was unavailable on the dates set for District's Case due to a prepaid vacation, and sought a continuance of the hearing to January 2020 if the matters were consolidated. Kern County orally moved to continue the hearing to January 21, 2020 because its counsel was unavailable beginning on January 7, 2020, due to another due process hearing continued by OAH to that date. After a discussion with the parties' counsel regarding their availability, all counsel stated that they were available for hearing beginning on January 21, 2020.

## 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 some common questions of fact. Among other things, both cases will require some of same witnesses and documentary evidence regarding Student's assessment history, areas of suspected disability, Parent's requests for assessment and consent to assess. In addition, consolidation furthers the interests of judicial economy by presenting witnesses and evidence in one hearing rather than two, which are scheduled to start within two weeks of one another. Thus, having the matters heard together will avoid duplication of evidence and save time. 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).)

The ALJ considered all of the relevant facts and circumstances, including the arguments stated in the papers and made by counsel during the prehearing conference, the length of the requested continuance, that there have been no prior continuances, the prejudice to the parties as a result of a continuance, and the impact of granting a continuance on other pending hearings. Based on the foregoing, the parties established good cause to continue the hearing in the consolidated matter to January 22, 2020.

## ORDER

1. Rosedale's Motion to Consolidate is granted.
2. Clarifying and correcting statements made on the record, District's Case is designated as the primary case. Student's Case is continued to the dates in District's Case and all dates previously set in Student's Case, OAH case number 2019100374, are vacated.
3. Student's and Respondents' motions to continue the hearing are granted. The Prehearing Conference in the consolidated cases shall be held on January 10, 2020 at 3:00 PM, and the Due Process Hearing in the consolidated cases shall be held on January 22 and 23, 2020, beginning at 9:30 AM on the first day, and 9:00 AM on all other days, continuing day to day as needed at the discretion of the ALJ.
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 District's Case, OAH case number 2019110885.
5. Student's motion for sanctions is denied.

**IT IS SO ORDERED.**

DATED: November 27, 2019

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Laurie Gorsline
Administrative Law Judge
Office of Administrative Hearings