BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS OF:

PARENT ON BEHALF OF STUDENT,

v.

CHINO VALLEY UNIFIED SCHOOL DISTRICT,

OAH CASE NUMBER 2020060369

and

CHINO VALLEY UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT,

OAH CASE NUMBER 2020100601.

ORDER FOLLOWING PREHEARING VIDEOCONFERENCE, GRANTING MOTION TO CONSOLIDATE AND REQUEST FOR CONTINUANCE

OCTOBER 23, 2020

On October 23, 2020, Administrative Law Judge Jennifer Kelly, 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. Parent appeared on behalf of Student. Student's advocate, Gedion Abraham attended the PHC. Julie Coate, Attorney at Law, appeared on behalf of Chino Valley Unified School District, referred to as Chino Valley. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

On June 11, 2020, Parent on behalf of Student filed with the Office of Administrative Hearings a request for due process hearing in OAH case number 2020060369, First Case, naming Student. The Office of Administrative Hearings is referred to as OAH.

OAH issued an Order Granting Joint Request to Schedule Mediation and Continue Due Process Hearing on July 15, 2020.

OAH granted Chino Valley's Motion to Continue Due Process Hearing on August 19, 2020.

Chino Valley filed a Request for Due Process Hearing in OAH case number 2020100601, Second Case, naming Parent on behalf of Student and Motion to Consolidate First Case and Second Case on October 20, 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, First Case and Second Case involve a common question of law or fact, specifically, whether Chino Valley's offer of placement for Student was appropriate. Consolidation of First Case and Second Case furthers the interests of judicial economy because both cases concern the same parties and similar witnesses testifying about whether Chino Valley's offer of placement for Student was appropriate. Judicial economy will be furthered by consolidating these matters and having them heard jointly.

CONTINUANCE

Chino Valley moved to continue the due process hearing on the basis it is in the process of conducting assessments of Student pursuant to an assessment plan consented to by Parents. Parents consented to the assessment plan on August 7, 2020. Chino Valley asserts in-person assessments of Student are necessary and appropriate to develop an individualized education program. Chino Valley further contends Parents are unwilling to make Student available for in-person assessments during the COVID-19 pandemic, and requests that the due process hearing date be continued.

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. Good cause may include the unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances; substitution of an attorney when the substitution is required in the interests of justice; a party's excused inability to obtain essential testimony or other material evidence despite diligent efforts; or another significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. (Ed. Code, § 56505, subd. (f)(3); Cal. Rules of Court, rule 3.1332(c).) OAH considers all relevant facts and circumstances, including the proximity of the hearing date; previous continuances or delays; the length of continuance requested; the availability of other means to address the problem giving rise to the request; prejudice to a party or witness as a result of a continuance; the impact of granting a continuance on other pending hearings; whether trial counsel is engaged in another trial; whether the parties have stipulated to a continuance; whether the interests of justice are served by the continuance or imposing conditions on the continuance; and any other relevant fact or circumstance. (Cal. Rules of Court, rule 3.1332(d).)

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. Chino Valley asserts it has been unable to complete its assessments of Student. Chino Valley contends in-person assessments are necessary to develop an appropriate individualized education program for Student. Parent agreed that further assessments of Student are necessary, and stated he has no objection to a continuance of the due process hearing.

Based upon the foregoing, good cause exists to grant Chino Valley's request for a continuance in this matter for the purpose of completing Student's assessments. This matter will be set as follows:

PREHEARING VIDEOCONFERENCE will be held on November 30, 2020, at 1:00 PM.

DUE PROCESS HEARING BY VIDEOCONFERENCE will be held on December 8 through 10, 2020. The hearing shall begin at 9:30 AM each day and generally end at 3:30 PM, unless otherwise ordered.

PARTICIPANT INFORMATION SHEETS FOR THE PREHEARING CONFERENCE MUST BE FILED TWO BUSINESS DAYS PRIOR TO THE DATE OF THE SCHEDULED EVENT.

Prehearing conference statements and motions are due to OAH no later than three business days before the prehearing conference or with a showing of good cause why it was not possible to file the motion by that date.

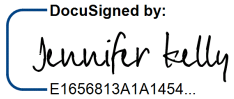
No further continuances of this matter shall be granted. This matter shall take priority over other scheduled matters absent proof by sworn declaration of a scheduling conflict with an earlier filed matter.

ORDER

1. Chino Valley's Motion to Consolidate and Motion to Continue are granted.
2. First Case is designated as the Primary Case.
3. 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 2020060369.
4. All dates in OAH case number 2020100601, Chino Valley's case are vacated.

5. The Prehearing Videoconference will be held on November 30, 2020, at 1:00 PM. The Due Process Hearing by Videoconference will be held on December 8 through 10, 2020.

IT IS SO ORDERED.



Jennifer Kelly

Administrative Law Judge

Office of Administrative Hearings