BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: KERN HIGH SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017060794
PARENT ON BEHALF OF STUDENT, v. KERN HIGH SCHOOL DISTRICT; PANAMA BUENA VISTA UNION SCHOOL DISTRICT.	OAH Case No. 2017050244 ORDER GRANTING KERN'S MOTION TO CONSOLIDATE

On May 3, 2017, Student filed with the Office of Administrative Hearings a Request for Due Process Hearing in OAH case number 2017050244 (Student's Case), naming Kern High School District, Panama Buena Vista Union School District, and a number of other educational agencies who have since settled with Student.

On June 16, 2017, Kern filed a Request for Due Process Hearing with OAH in case number 2017060794 (District's Case), naming Student. On June 16, 2017, Kern also filed a Motion to Consolidate Student's and District's case. On June 21, 2017, Student and Panama opposed.

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, both Student's and Kern's cases involve assessments and services during an overlapping time period, including the 2016-2017 school year. Student's Case involves Kern's alleged free appropriate public education denials which include the provision of a

one-to-one aide, a behavior plan, and a functional behavior assessment for which she requested an independent assessment from Kern. Kern's Case involves the appropriateness of its 2016-2017 FAPE offers and its October 29, 2016 functional behavior assessment. Both cases involve a common question of law or fact. In addition, consolidation furthers the interests of judicial economy because the same witnesses will need to testify in both cases and the same documentary evidence, including the appropriateness of the 2016-2017 FAPE offers, special education assessments, whether Kern is required to fund any independent assessments.

Student's arguments of prejudice of a delayed hearing if consolidation were granted were outweighed by factors in favor of consolidation especially since consolidation would trigger a brief delay of the hearing, from June 27, 2017 to July 13, 2017. Panama's opposition, stating that it would withdraw its opposition to the consolidation if its bifurcation motion were granted, also did not articulate factors outweighing consolidation.[1]

Accordingly, consolidation is granted.

ORDER

1. Kern's Motion to Consolidate is granted.

2. All dates previously set in OAH Case Number 2017050244 Student's Case, are vacated, and continued, as set forth below.

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 OAH Case Number 2017060794, Kern's Case.

4. The mediation, prehearing conference, and due process hearing dates will be according to the June 19, 2017 Scheduling Order in Kern's Case which are as follows:

Mediation: July 5, 2017, at 9:30 a.m.
Prehearing conference: July 7, 2017, at 3:00 p.m.
Due process hearing: July 13, 17, 18, 19 and 20, 2017, starting at 9:30 a.m. on July 13 and 17, 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.

Both the mediation and the due process hearing will be held at Kern's office located at 5801 Sundale Avenue, Bakersfield, CA 93309.

[1] Panama filed its bifurcation motion on June 21, 2017. OAH will rule on the bifurcation motion separately after all parties have had the opportunity to file oppositions, or other responses, to Panama's motion.

5. The primary case shall be Kern's Case, and the parties shall use the consolidated caption for all filings after this date.

IT IS SO ORDERED.

DATE: June 22, 2017

DocuSigned by:
Sabrina Kong
6150FBB6742E44F...

SABRINA KONG
Administrative Law Judge
Office of Administrative Hearings