BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

DOWNEY UNIFIED SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NUMBER 2022120719

ORDER FOLLOWING EXPEDITED PREHEARING CONFERENCE, DISMISSING EXPEDITED ISSUE, AND GRANTING MOTION TO CONSOLIDATE NON-EXPEDITED ISSUES

JANUARY 3, 2023

On December 30, 2022, Administrative Law Judge Tiffany Gilmartin, Office of Administrative Hearings, held a prehearing conference by videoconference. The Administrative Law Judge is called an ALJ. The Office of Administrative Hearings is called OAH. The prehearing conference is called a PHC.

Attorney Alefia Mithaiwala appeared on behalf of Downey Unified School District. Attorney Damian Fragoso appeared on behalf of Student. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

DISMISSING DOWNEY'S EXPEDITED ISSUE

Counsel for both parties were heard on Downey's expedited issue. The expedited issue was dismissed as Downey is not seeking an order from OAH determining student is a threat to himself or others and requires placement in an interim alternative educational setting for no more than 45 days. (20 USC § 1415(k)(3)(A).) This ruling does not impact Downey's non-expedited issues. All dates for Downey's expedited due process hearing are vacated.

MOTION TO CONSOLIDATE

On December 23, 2022, Downey filed with the Office of Administrative Hearings a Request for Due Process Hearing in OAH case number 2022120719, Downey's Case, naming Student.

On December 9, 2022, Student filed a Request for Due Process Hearing in OAH case number 2022120336, Student's Case, naming Downey.

On December 28, 2022, Downey filed a Motion to Consolidate the cases 2022120719, Downey's case, and 2022120336, Student's case. Student does not object to the motion.

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, both cases involve a common question of law or fact, specifically, whether Downey's November 29, 2022 individual education program offers Student a free appropriate public education in the least restrictive environment. Student does not oppose the motion. In addition, consolidation furthers the interests of judicial economy because the matters involve similar questions of law and fact, involve the same witnesses and parties. Accordingly, consolidation is granted. Student's case also has a pending expedited issue. Student's expedited issue remains on calendar for prehearing conference on January 9, 2023 and expedited due process hearing January 18 and 19, 2023.

1. Downey's Motion to Consolidate is granted.
2. Student's Case is designated as the primary case. All dates previously set in Downey's Case, OAH case number 2022120719, are vacated.

IT IS SO ORDERED.

Tiffany Gilmartin
Tiffany Gilmartin (Jan 3, 2023 13:19 PST)

Tiffany Gilmartin
Administrative Law Judge
Office of Administrative Hearings