BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

UPLAND UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2020090375

ORDER DENYING MOTION TO CONSOLIDATE

OCTOBER 2, 2020

On August 13, 2019, Student filed with the Office of Administrative Hearings, referred to as OAH, a Request for Due Process Hearing in OAH Case Number 2019080542, Student's First Case, naming Upland Unified School District. OAH granted Student's request to amend the complaint in Student's First Case on December 4, 2019.

On January 14, 2020, Upland filed a Request for Due Process Hearing in OAH Case Number 2020010465, Upland's Case, naming Student. Upland's complaint included claims for the same time period as Student's First Case and also the 2018-2019 school year, and alleged Student was not entitled to a free appropriate public education, referred to as FAPE, because of an alleged unilateral parental private school placement and Parent's refusal to consent to Upland assessing Student. Upland's Case also sought a finding that the October 31, 2016 individualized education program, referred to as an

IEP, offered Student a FAPE and remained available to Student through the 2018-2019 school year. On January 16, 2020, OAH granted Upland's Motion to Consolidate its case with Student's First Case and to continue the due process hearing dates in the consolidated matter to the dates set in Upland's Case, OAH Case Number 2020010465.

Due to circumstances related to the novel coronavirus, COVID-19, pandemic and various governmental orders relating thereto, on March 20, 2020, OAH continued the prehearing conference and due process hearing in the consolidated case to dates to be determined.

On April 2, 2020, Student filed with OAH a Request for Due Process Hearing in OAH Case Number 2020040245, Student's Second Case, naming Upland. On April 30, 2020, Upland filed a Motion to Consolidate Student's Second Case, OAH Case Number 2020040245, and the consolidated case, OAH Case Numbers 2019080542 and 2020010465.

On May 1, 2020, Student filed a second motion to amend the complaint in Student's First Case. OAH granted Student's request to amend the complaint in Student's First Case on May 4, 2020. OAH scheduled the due process hearing to begin on June 23, 2020.

Also on May 4, 2020, OAH granted Upland's Motion to Consolidate Student's Second Case and the consolidated case.

On June 17, June 26, July 24, and July 31, 2020, OAH granted Student's requests for continuances. Administrative Law Judge Kara Hatfield heard the consolidated matter of Student's First and Second Cases and Upland's Case, OAH Case Numbers 2019080542/2020040245/2020010465, on August 25, 26, and 27, and September 1, 2, 3, 15, 17, 22, 24, and 25, 2020.

On September 11, 2020, while the due process hearing was in progress, Student filed a Request for Due Process Hearing in OAH Case Number 2020090375, Student's Third Case, naming Upland. Student's Third Case raises claims regarding alleged failures by Upland to comply with procedures and offer Student a FAPE for the 2018-2019 regular school year and 2019 extended school year.

On September 21, 2020, Upland filed a Motion to Consolidate the already-consolidated matters of Student's First and Second Cases and Upland's Case with Student's Third Case.

On September 24, 2020, Parent on behalf of Student filed an objection to consolidation on the ground that the due process hearing in progress in the earlier-filed cases involved different time periods, different issues of fact and law, and different documentary evidence and witnesses. Also on September 24, 2020, Student's attorney in the earlier-filed cases filed an objection to consolidation on the ground that consolidation would add issues to the hearing-in-progress and delay a decision in those cases. On October 1, 2020, Student's attorney in the earlier-filed cases filed a Further Opposition to District's Motion to Consolidate.

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].)

Upland's issues in the already-consolidated matters of Student's First and Second Cases and Upland's Case address whether or not Student was entitled to a FAPE from Upland during the 2018-2019 school year because of an alleged unilateral parental private school placement and Parent's refusal to consent to Upland assessing Student, and, if Student was entitled to a FAPE during the 2018-2019 school year, whether the October 31, 2016 IEP offered Student a FAPE and remained available to her during the 2018-2019 school year. Student's Third Case and the already-consolidated matter appear to involve common questions of law and fact, specifically, Student's right to a FAPE during the 2018-2019 school year and whether Upland offered her a FAPE in that time period.

However, Upland offered no authority for the proposition that a newly-filed case regarding common questions of law or fact may be consolidated into a due process hearing that has already commenced, or has almost concluded. The interests of judicial economy will be served through the doctrines of res judicata/claim preclusion or collateral estoppel/issue preclusion after the Decision is issued in the consolidated matters of Students' First and Second Cases and Upland's Case, to the extent they may be applicable to any claims or issues in Student's Third Case. (*Student v. Los Angeles Unified School District* (2007) OAH Case No. 2007010315, pp. 5-7, 17-19, 20-21.)

ORDER

Upland's Motion to Consolidate is denied without prejudice to asserting the doctrines of res judicata/claim preclusion or collateral estoppel/issue preclusion after the Decision in OAH Case Numbers 2019080542/2020040245/2020010465 is issued, if appropriate.

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Kara Hatfield
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Kara Hatfield

Administrative Law Judge

Office of Administrative Hearings