BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. POWAY UNIFIED SCHOOL DISTRICT,	OAH Case No. 2018060763
POWAY UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2018080048 ORDER GRANTING MOTION TO CONSOLIDATE AND GRANTING MOTION TO CONTINUE

On June 18, 2018, Parent on behalf of Student filed with the Office of Administrative Hearings a request for due process hearing (complaint) in OAH case number 2018060763, naming Poway Unified School District (Student's case).

On August 1, 2018, Poway filed with OAH a complaint in OAH case number 2018080048, naming 60763, naming Parent on behalf of Student (Poway's case).

On August 1, 2018, Poway filed a motion to consolidate Student's case with Poway's case, and to continue the due process hearing date set in Student's case to the hearing date scheduled for Poway's case.

On August 2, 2018, Student filed a non-opposition to consolidation and a continuance.

Consolidation

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, Student's case and Poway's case involve common questions of law or fact, specifically, whether Poway offered Student a FAPE in the September 6, 2017 IEP, as amended. In addition, consolidation furthers the interests of judicial economy because the same witnesses and evidence will be presented in both cases. Consolidation will avoid the duplication of time, expense and resources involved in having these matters proceed to hearing separately, and avoid the possibility of conflicting results. Accordingly, consolidation is granted.

Continuance

A due process hearing must be held, and a decision rendered, within 45 days of receipt of the complaint, unless a continuance is granted for good cause. (Ed. Code, §§ 56502, subd. (f) & 56505, subd. (f)(1)(C)(3).) 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. (See 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; and any other relevant fact or circumstance. (See Cal. Rules of Court, rule 3.1332(d).)

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. The consolidation of these matters constitutes a significant and unanticipated change in the status of the case as a result of which the case is not ready for hearing. Accordingly, the request for continuance is granted.

ORDER

1. Poway's motion to consolidate and continue is granted. Student's case is primary.
2. All dates previously set in OAH Case Number 2018060783 (Student's case) are vacated.
3. All dates in OAH case number 2018080048 (Poway's case) are confirmed. The parties shall participate in a consolidated prehearing conference at 3:00 p.m. on August 20, 2018. OAH will initiate the call. The parties shall file new PHC statements at least three days prior to the PHC in these consolidated cases. The due process hearing in the consolidated cases shall be held on August 28-30,

2018, at 9:30 a.m., on the first day, and at 9:00 a.m. on all other days, and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.

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 OAH case number 2018060763 (Student's case).

DATE: August 2, 2018

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Alexa Hohensee
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ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings