BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: MIDDLETOWN UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT,	OAH Case No. 2018110516
PARENT ON BEHALF OF STUDENT, v. MIDDLETOWN UNIFIED SCHOOL DISTRICT.	OAH Case No. 2019030238 ORDER FOLLOWING PREHEARING CONFERENCE AND GRANTING MOTION TO CONSOLIDATE

On March 11, 2019, a telephonic prehearing conference was held before Administrative Law Judge Charles Marson, Office of Administrative Hearings. Jennifer E. Nix, Attorney at Law, appeared on behalf of the Middletown Unified School District. Betsy Brazy, Attorney at Law, appeared on behalf of Student. The PHC was recorded.

Based upon discussion with the parties, the ALJ issues the following order:

1. Motion to Consolidate. On March 6, 2019, Student filed a separate request for due process hearing naming Middletown, which was given OAH Case Number 2019030238 (Student's Case). On the same day Student filed a motion to consolidate the new filing with Middletown's case, OAH No. 2018110516. On March 11, 2019, Middletown filed an opposition to the motion to consolidate.

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].)

At the outset of the PHC, the motion to consolidate was argued. Middletown argued that it was prepared to proceed to hearing with witnesses and documents; that it would be prejudiced by any delay in the resolution of the matter; and that the motion for consolidation was untimely. Student advanced several factual reasons why the motion was not filed earlier. In addition, the parties agreed that when Middletown filed its complaint, Student had no placement and was not being formally educated. Student's attorney represented that Student was now in Anova, a private school, as the result of a unilateral placement by Parents, so that resolution of the matter was not as urgent as it had previously been.

After hearing argument, the ALJ ruled that while both parties had substantial reasons for their positions, the balance of equities favored consolidation. Although the delay of Middletown's case will inconvenience the District, that factor is outweighed by the benefits of consolidation. Student's Case and Middletown's Case involve common questions of law or fact, specifically, whether Middletown's individualized education program offers of September 4 and 27 constituted offers of a free appropriate public education, and whether Parent is entitled to independent educational evaluations of Student's psychoeducational and occupational therapy needs at Middletown's expense. In addition, consolidation furthers the interests of judicial economy because many of the witnesses and exhibits in the two matters will be the same, and because consolidation will avoid inconsistent judgments.

Accordingly, Student's motion to consolidate is GRANTED. All other matters are deferred to the PHC in the consolidated cases.

ORDER

1. All dates previously set in OAH Case No. 2018100515 (Middletown's case) are vacated.

2. 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 No. 2019030238 (Student's case), which is designated the primary case. OAH shall issue a new scheduling order.

DATE: March 11, 2019

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Charles Marson
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CHARLES MARSON
Administrative Law Judge
Office of Administrative Hearings