BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:

PARENT ON BEHALF OF STUDENT,

and

SAN DIEGO UNIFIED SCHOOL DISTRICT,

OAH CASE NUMBER 2023070223

OAH CASE NUMBER 2023060384

ORDER GRANTING MOTION TO CONSOLIDATE AND GRANTING MOTION TO CONTINUE TO DATES PREVIOUSLY REQUESTED BY THE PARTIES

JULY 26, 2023

On June 9, 2023, San Diego Unified School District filed a Request for Due Process Hearing with the Office of Administrative Hearings in OAH case number 2023060384, naming Student as respondent. On June 15, 2023, the parties' joint request to schedule a full-day mediation on August 11, 2023 with prehearing conference scheduled on August 25, 2023 and hearing on September 6 and 7, 2023 was granted.

On July 6, 2023, Student filed a Request for Due Process Hearing in OAH case number 2023070223, naming San Diego as respondent. On July 19, 2023, Student filed a motion to consolidate the two cases on the grounds that consolidation would promote judicial economy. San Diego did not oppose consolidation, but asked that the previously agreed mediation and hearing dates be maintained. Student opposed the request to maintain the previously agreed dates on the grounds that Student wanted the opportunity to request a new mediation date for the consolidated case and a further continuance.

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) Code of Civ. Proc., § 1048, subd. (a).)

Student's motion failed to identify the common questions of law or fact with any specificity. In future, Student should not presume that a motion to consolidate will be granted without a specific statement of commonalities between the cases. In this case, San Diego supplied the information. Both cases involve common questions of law or fact, specifically, questions from both sides involving assessments that were completed. San Diego does not oppose consolidation. Additionally, consolidation furthers the interests of judicial economy because both cases will necessarily involve overlapping witness testimony and evidence. Thus, consolidation is granted.

CONTINUANCE

A due process hearing must be conducted, and a decision rendered, within 45 days of receipt of the due process notice, unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances are disfavored. OAH considers all relevant facts and circumstances in determining whether good cause exists to grant an extension. (See Cal. Rules of Court, rule 3.1332(d).)

In this case, San Diego requests that previously agreed dates for mediation and hearing be maintained. Student's opposition to this request is neither persuasive nor does it align with Student's argument that consolidation should be granted to promote judicial economy.

Student appears to argue that it could not mediate both cases on the date previously selected for mediation. However, Student offers no reason why both cases could not be mediated on the August 11, 2023 mediation date already set. The parties asked for a full-day mediation, which is the most time allocated to any single request for mediation, even in consolidated cases. The mediation date is after the end of Student's resolution period, so it does not interfere with any resolution efforts Student wishes to make in advance of mediation. The date gives Student more time to prepare for hearing than it would have had pursuant to the original schedule ordered in Student's case, which set hearing to begin August 22, 2023.

Student offers no facts, nor any legal basis supporting the need for a different date for mediation or for an additional continuance of the hearing. Simply changing

previously agreed dates because a consolidation motion has been filed does not promote judicial economy.

ORDER

1. Student's Motion to Consolidate is granted.
2. Student's Case, OAH case number 2023070223 is designated as the primary case. The prehearing conference and hearing dates previously set in San Diego's Case, OAH case 2023060384, are vacated.
3. San Diego's request to maintain the previously agreed mediation, prehearing conference and hearing dates, thus resulting in a continuance of the prehearing conference and hearing dates scheduled in Student's case, is granted.
4. Mediation of shall be held on August 11, 2023 from 9:00 AM to 4:30 PM as previously agreed by the parties. Mediation will address all issues in the consolidated cases.
5. The prehearing conference and hearing dates previously scheduled in Student's case are vacated. The new dates are:
   PREHEARING CONFERENCE will be held on August 25, 2023 at 3:00 PM
   HEARING will be held on September 6 and 7, 2023 beginning at 9:30 AM on all days, unless otherwise ordered. The hearing shall continue day to day, Mondays and Fridays included, as needed, at the discretion of the Administrative Law Judge.
6. 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 Student's Case, OAH case number 2023070223.

IT IS SO ORDERED.

Penelope Pahl

Penelope S. Pahl

Administrative Law Judge

Office of Administrative Hearings