BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS OF:

PARENT ON BEHALF OF STUDENT,

and

DEL MAR UNION SCHOOL DISTRICT,

OAH CASE NUMBER 2020120692

OAH CASE NUMBER 2021050590

ORDER GRANTING MOTIONS TO RECONSIDER, ORDER UNCONSOLIDATING CASES AND GRANTING MOTION TO CONTINUE IN 2021050590

JULY 09, 2021

On July 6, 2021, Parent on behalf of Student filed with the Office of Administrative Hearings, referred to as OAH, motions to reconsider, vacate or reverse prior OAH rulings denying a motion to continue, and taking no action on a subsequent motion to continue and a motion for permissive withdrawal by counsel in Case Number 2021050590. Parent also filed a motion to compel and requested other relief. The motion was filed one day before commencement of the hearing in the consolidated matter. Del Mar Union School District orally opposed the motion to continue at hearing

on July 7, 2021. Student's counsel also opposed the continuance at the hearing. Parent argued that she represents Student in Case Number 2021050590 and did not authorize counsel to represent Student in that matter.

FINDINGS OF FACT

On May 18, 2021, Del Mar Union filed and served a motion to continue in Case Number 2020120692. Del Mar Union filed and served its Due Process complaint on May 19, 2021. OAH received the complaint at 4:53 p.m. Del Mar Union filed a Motion to Consolidate and Continue on May 19, 2021 at 4:54 PM in 2021050590. The complaint was served on counsel for Student in Case Number 2020120692, and on Parent via mail at Parent's home and email addresses. Parent verified these addresses were correct at hearing on July 7, 2021.

Student's counsel, Sheila Bayne, opposed the motion to continue but did not oppose the motion to consolidate. No mention was made at the time that Parent was going to be representing student in pro per in 2021050590. Parent did not separately oppose the motions. OAH consolidated the two cases on May 21, 2021, and continued the prehearing conference to June 28, 2021, and the hearing to July 7 and 8, 2021.

On June 28, 2021, Parent filed a motion to continue the case and to amend the complaint in Case Number 2020120692. OAH denied the motion without prejudice on the grounds that Parent did not have standing to bring the motion as Student was represented by counsel. Parent appeared at the PHC on June 28, 2021 and objected to the matter proceeding as a consolidated matter. Parent claimed that Ms. Bayne's firm was not retained to represent Student or Parent in Case Number 2021050590. The ALJ gave the parties time to sort out the issues off the record and in private. After going

back on the record, OAH was informed that Ms. Bayne continued to represent to Student in both actions.

On June 29, 2021, Parent filed an incomplete motion for reconsideration and to continue. OAH took no action on that motion. On July 1, 2021, Ms. Bayne filed a motion for permissive withdrawal in action 2021050590. Ms. Bayne's stated under oath that she was currently representing Student in both actions, that on or around May 19, 2021, she received written confirmation from Parent for Ms. Bayne to represent of Student in both matters, and that Parent "made no mention of wanting separate representation for OAH Case # 2021050590 at that time." According to Ms. Bayne, on June 30, 2021, she received an email from Parent advising her that Ms. Bayne did not have authority to represent Student in Case Number 2021050590. OAH took no action on the motion to withdraw, as Student could not be represented by an attorney and parent simultaneously in the consolidated action.

In Parent's July 6, 2021 motion, Parent states under oath that she was not aware of Del Mar Union's complaint, did not have any communication with Ms. Bayne's firm until June 25, 2021, and never authorized the law firm to represent Student in Case Number 2021050590.

CONSOLIDATION AND CONTINUANCE

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].)

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).)

Parent was served with a copy of the complaint and the motion to consolidate and continue via email and mail on May 19, 2021. Absent evidence that the proof of service is not accurate, there is a presumption Parent was on notice of the complaint and motion, and Parent took no action whatsoever to oppose the motion in May of 2021 or put OAH or Del Mar Union on notice that Parent was representing Student in pro per in the Del Mar Union action. Ms. Bayne filed an opposition to the motion to continue, did not advise Del Mar Union or OAH she was only representing Student in #2020120692, and did not oppose consolidation. As of May 21, 2021, OAH and Del Mar Union were under the reasonable belief that Ms. Bayne represented Student's interests in both cases.

There is now a dispute as to whether Ms. Bayne was authorized to represent Student in Case Number 2021050590. Ms. Bayne has testified under oath that her firm received written authorization from Parent to do so on May 19, 2021 and was then advised in writing on June 30, 2021 that Parent did not authorize representation. Parent denies under oath she gave consent for Ms. Bayne to represent Student in the Del Mar Union case at any time. No copies of the writings or emails have been provided by Parent or Ms. Bayne. As such, there is no credible evidence as to what Ms. Bayne's

authority was in Case Number 2021050590 between May 19, 2021 and June 30, 2021. However, it is undisputed that Parent terminated Ms. Bayne's representation on June 30, 2021 in Case Number 2021050590.

Considering the foregoing, while the matter involves the same parties and common questions of law and fact, consolidation no longer furthers the interests of judicial economy by saving time or preventing inconsistent rulings. Nor will OAH permit a consolidated action to proceed where Student is both in pro per and represented by counsel. As such, Case Numbers 2020120692 and 2021050590 are no longer consolidated cases.

Parent's motion to reconsider and motion to continue Case Number 2021050590 is granted. Case Number 2020120692 will proceed to hearing as scheduled on July 7, 2021. The hearing in Case Number 2021050590 will be continued to August 24, 25, 26, 2021 and the PHC will be held on August 16, 2021 at 1:00 PM. For purposes of the 45-day timeline requirement, OAH deems Case Number 2021050590 having been first continued May 21, 2021.

Parent's motion to reconsider as to Student's motion for permissive withdrawal is granted. Beginning on July 7, 2021, Parent represents Student in Case Number 2021050590 in pro per. The motion to compel is denied without prejudice in Case Number 2021050590 only. Parent can refile her motion compel separately with OAH in that case. All other relief requested by Parent is denied.

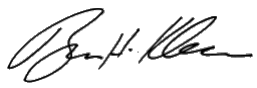
Because this issue arose due to the lack of communication between Parent and Student's counsel, and because there is no clear evidence presented to OAH whether Student authorized or did not authorize Ms. Bayne to represent Student in Case Number 2021050590, this order is without prejudice to Del Mar Union filing a motion for

reasonable costs incurred to prepare Del Mar Union's case in Case Number 2021050590 for hearing on July 7, 2021, if it elects to do so.

ORDER

1. This matter is ordered to be unconsolidated, and Case Number 2020120692 shall proceed to hearing on July 7, 2021.
2. Parent's Motion to reconsider Parent's Motion to Continue is granted. The Prehearing Conference in Case Number 2021050590 shall be held on August 16, 2021, at 1:00 PM, and the Due Process Hearing in shall be held on August 24, 25, and 26, 2021, beginning at 9:30 AM, continuing day to day as needed at the discretion of the Administrative Law Judge.
3. The 45-day timeline for issuance of the decision in the Case Number 2021050590 shall be based upon the date of filing of that due process complaint, and shall have been deemed first continued on May 21, 2021.
4. The order is without prejudice to Del Mar Union filing a motion for reasonable costs incurred to prepare Del Mar Union's case in 2021050590 for hearing today, if it elects to do so.
5. All other relief is denied.

IT IS SO ORDERED.



Brian H. Krikorian
Administrative Law Judge
Office of Administrative Hearings