BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. LONG BEACH UNIFIED SCHOOL DISTRICT,	OAH Case No. 2014080633 (Primary)
LONG BEACH UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2015020860 ORDER GRANTING MOTION TO CONSOLIDATE

On August 12, 2014, Student filed a Request for Due Process Hearing in OAH case number 20140800633 (Student's Case), naming Long Beach Unified School District. Student's case is set for hearing on March 23, 2015.

On February 13, 2015 District filed a Request for Due Process Hearing in OAH case number 2015020860 (District's Case), naming Parent on Student's behalf. Also on February 13, 2015, District filed a Motion to Consolidate the Student's Case with the District's Case. District's case is set for hearing on March 12, 2015. Implicit in District's motion is a request to continue District's case to the dates in Student's case. Student did not oppose District's Motion.

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].)

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. 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).)

Here, the Student's Case and District's Case involve a common question of law or fact. Specifically, Student contends that District failed to appropriately assess Student in all areas of need, including Central Auditory Processing. District's case contends that it appropriately assessed Student in Central Auditory Processing on October 21, 2014, and as a result seeks an order that Student is not entitled to an independent evaluation at public expense. Consolidation furthers the interest of judicial economy because the cases share a common issue which involve similar or the same witnesses and evidence. Additionally, the two cases are set for hearing within two weeks of each other. Accordingly, consolidation is granted, District's case is continued to the dates in Student's case, and the dates in District's case will be vacated.

ORDER

1. District's Motion to Consolidate and Continue District's Case is granted.
2. All dates previously set in OAH Case Number 2015020860 [District's Case] are vacated.
3. The consolidated matters shall be heard on the dates set in Student's case, with the hearing set to begin on March 23, 2015.
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 2014080633 [Student's Case].

DATE: February 20, 2015

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings