

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. SANGER UNIFIED SCHOOL DISTRICT,	OAH Case No. 2016060960
SANGER UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2016061083 ORDER GRANTING MOTION TO CONSOLIDATE AND GRANTING MOTION TO CONTINUE

On June 17, 2016, Student filed with the Office of Administrative Hearings a Request for Due Process Hearing in OAH case number 2016060960 (Student’s Case), naming Sanger Unified School District.

On June 23, 2016, Sanger filed a Request for Due Process Hearing in OAH case number 2016061083 (District’s Case), naming Student.

On June 29, 2016, the parties filed a joint stipulation to consolidate District’s Case with Student’s Case, and to continue the prehearing conference and hearing dates. The parties’ filing is treated as a motion to consolidate and to continue. This is the first request for a continuance.

APPLICABLE LAW

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].)

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. 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).)

DISCUSSION

Among other claims, Student identifies as an issue for hearing, whether Sanger appropriately assessed him in all areas of suspected disability. Student specifically seeks an order finding Sanger's November 2015 occupational therapy assessment and December 2015 speech and language assessment insufficiently comprehensive, and requests independent educational evaluations in these two areas. Sanger seeks an order finding that its occupational therapy and multidisciplinary psycho-educational assessment, including a speech and language assessment, are legally compliant such that Student is not entitled to publically-funded independent educational evaluations. Student's Case and District's Case involve common question of law and fact. Therefore, consolidation is warranted and will prevent the risk of inconsistent rulings.

In addition, consolidation furthers the interests of judicial economy because both cases involve the same parties, and many of the same witnesses would be required to testify in each proceeding. Each matter will also involve the introduction of the same or similar documents including the Fall 2015 assessment reports. Accordingly, consolidation is granted.

When consolidating cases, OAH designates the statutory timelines applicable to the consolidated matters to be controlled by one of the cases. Here, the statutory timelines shall be controlled by Student's Case.

The parties have established good cause for an initial continuance based upon witness availability issues. The parties' request to maintain the mediation date of July 21, 2016, currently set for Student's Case, and to continue the prehearing conference and hearing dates is granted.

ORDER

1. The parties' Motion to Consolidate is granted.
2. All dates previously set in OAH Case Number 2016061083, District's Case, are vacated.
3. 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 2016060960, Student's Case.
4. The parties' Motion to Continue is granted. The consolidate cases shall now be heard as follows:

Mediation:	July 21, 2016, at 9:30 a.m. ¹
Prehearing Conference:	August 5, 2016, at 10:00 a.m.
Due Process Hearing:	August 22, 2016, at 1:30 p.m., August 23-24, 2016, at 9:00 a.m., and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.

IT IS SO ORDERED.

DATE: June 30, 2016

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THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings

¹ OAH schedules mediations beginning at 9:30 a.m. The parties did not establish good cause for a delayed start time of 10:30 a.m.