

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SOUTH PASADENA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2014030270

ORDER FOLLOWING PREHEARING
CONFERENCE, DENYING
DISTRICT'S MOTION TO DISMISS,
GRANTING DISTRICT'S MOTION TO
CONSOLIDATE WITH OAH CASE
NUMBER 2014030840 AND
GRANTING CONTINUANCE

On March 28, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Marian H. Tully, Office of Administrative Hearings (OAH) in OAH case number 2014030270. Student's mother (Parent) represented Student. Attorney Kristin Myers appeared on behalf of South Pasadena Unified School District (District). The PHC was recorded. At the PHC, District's motions to dismiss and consolidate, and Student's motion for a continuance were argued and ruled on.

Based on discussion of the parties, the ALJ issues the following order:

1. District's motion to dismiss. On March 7, 2014, Student filed a Request for Due Process Hearing (First Case). On March 26, 2014, District filed a motion to dismiss Student's complaint for failure to participate in a resolution session. On March 27, 2014, Student filed a request to continue the PHC so that Parent could participate in a resolution session. On March 28, 2014, Student filed opposition to District's motion to dismiss on the grounds Student wanted to participate in a resolution session. The parties agreed to hold a resolution session within 15 days of the date of this order and to begin the resolution session at or after 3:00 p.m. on the agreed upon date. Accordingly, District's motion to dismiss is denied without prejudice and Student's request to continue the PHC is granted below.

2. District's motion to consolidate. On March 24, 2014, District filed a Request for Due Process Hearing in case number 2014030840 (Second Case). On March 24, 2014, District filed a motion to consolidate the First Case and the Second Case and to continue the consolidated cases. Student agreed to the consolidation during the PHC. Both cases involve assessments conducted in May and June 2013, and an IEP team meeting on June 10, 2013, at which time District determined Student was not eligible for special education. Consolidation of these two matters would further the interests of judicial economy because there are common questions of law and fact, there will be substantial overlap in the witnesses and documentary evidence in both cases and the parties have agreed upon four days for the hearing. (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].) Therefore, the motion to consolidate is granted.

All dates previously set in Student's case, OAH case number 2014030270, and District's case, OAH case number 2014030840, are vacated. The primary case in the consolidated cases is OAH case number 2014030270. The timelines 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 201403270.

3. Mediation and Hearing Dates, Times, and Location. Mediation in the consolidated cases is set for May 15, 2014, at 9:30 a.m. The hearing on the consolidated cases is continued on joint motion of the parties and shall take place on June 9, 10, 11, and 12, 2014, and continuing day to day, Monday through Thursday as needed at the discretion of the ALJ. The hearing shall begin each day at 9:00 a.m. and end at 5:00 p.m., with the exception of the first day of hearing, on which day the hearing shall begin at 1:30 p.m., unless otherwise ordered. The mediation and the due process hearing shall take place at District offices located at 1020 El Centro Street, South Pasadena, California 91030.

The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure that the witnesses will be available to testify. A witness will not be regarded as unavailable for purposes of showing "good cause" to continue the hearing if the witness is not properly notified of the hearing date or properly subpoenaed, as applicable.

4. Prehearing Conference. Pursuant to stipulation between the parties, the PHC is continued to May 30, 2014, at 3:00 p.m. Prehearing conference statements, exhibit and witness lists in the consolidated matters shall be filed with OAH and served upon the opposing party by 5:00 p.m. May 27, 2014. Except for good cause shown, or unless used solely for rebuttal or impeachment, any exhibit not included in the exhibit lists and not previously exchanged in compliance with Education Code section 56505, subdivision (e)(7) shall not be admitted into evidence at the hearing unless it is supported by written declaration under penalty of perjury, and the ALJ rules that it is admissible. Neither party shall be permitted to call any witnesses not disclosed in the party's prehearing conference statement except for good cause shown, supported by written declaration under penalty of perjury, and at the discretion of the ALJ.

5. All other prehearing matters will be taken up at the PHC on May 30, 2014.

IT IS SO ORDERED.

DATE: March 28, 2014

/s/

MARIAN H. TULLY
Administrative Law Judge
Office of Administrative Hearings

