

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

v.

CARLSBAD UNIFIED SCHOOL
DISTRICT,

OAH CASE NO. 2015030156

CARLSBAD UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2015050233

ORDER DENYING STUDENT'S
MOTION TO DISMISS DISTRICT'S
CASE AND ORDER PREHEARING
CONFERENCE AND FILING OF
PREHEARING CONFERENCE
STATEMENTS

On February 27, 2015, Student filed a due process hearing request, naming Carlsbad Unified School District. On April 2, 2015, OAH granted the parties' joint request for a first continuance of the hearing dates to May 18, 2015. On May 6, 2015, District filed a due process hearing request naming Student and a motion to consolidate Student's case with the District's case. At the May 11, 2015 prehearing conference the Administrative Law Judge granted District's Motion to Consolidate and continued the due process hearing dates of the consolidated case from May 18, 2015 to June 29, 30, 2015, July 1, 2 and 7, 2015. On June 18, 2015, Student withdrew his case and filed a Motion to Dismiss District's case.

Although OAH has granted motions to dismiss allegations that are facially outside of OAH jurisdiction, e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc. OAH will not dismiss claims that have otherwise been properly pleaded. Student's Motion to Dismiss was based on Student's June 28, 2015 withdrawal of the issues in his case. Student's contended that the withdrawal rendered District's due process complaint moot because the subject matter of both the District's case and Student's case was whether Student was eligible for special education. District's due process complaint was properly pleaded. Therefore, District has the right to a due process hearing pursuant to the May 11, 2015 Order Following Prehearing Conference, Granting Motion to Consolidate and Denying Motion to Bifurcate, on District's issue as follows:

1. Was Student eligible for special education from September 1, 2014 to May 6, 2015?

The May 11, 2015 Order Following Prehearing Conference remains unchanged in all respects with the exception that Student's issues have been withdrawn and the hearing will proceed solely as to District's issue. Unless District files a notice of withdrawal and/or dismissal, OAH will initiate a call for a PHC:

PHC

Date: June 26, 2015

Time: 10:00 a.m.

The PHC will be for the purpose of reviewing District's issue for hearing and truncating the number of days for hearing now that the Student has withdrawn his case. **The parties must file new PHC statements by Tuesday June 23, 2015.¹**

IT IS SO ORDERED.

DATE: June 19, 2015

/s/

SABRINA KONG
Administrative Law Judge
Office of Administrative Hearings

¹ The parties' PHC statements shall discuss whether OAH has jurisdiction to hear District's case as to Student's eligibility for special education and related services.