

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

OAH Case No. 2015110501 (Primary)

v.

CAPISTRANO UNIFIED SCHOOL
DISTRICT,

CAPISTRANO UNIFIED SCHOOL
DISTRICT,

OAH Case No. 2015120001 (Secondary)

v.

PARENT ON BEHALF OF STUDENT.

ORDER: (1) GRANTING DISTRICT'S
MOTION TO CONSOLIDATE AND (2)
GRANTING REQUEST TO CONTINUE
MEDIATION, PREHEARING
CONFERENCE AND HEARING
DATES

On November 10, 2015, Parent on behalf of Student filed a request for due process hearing (complaint) in OAH case number 2015110501 (Student's Case), naming Capistrano Unified School District. On November 25, 2015, District filed a complaint in OAH case number 2015120001 (District's Case), naming Student.

On November 25, 2015, District filed a motion to consolidate Student's Case with District's Case. On December 1, 2015, Student filed an opposition. On December 3, 2015, Student withdrew its opposition.

APPLICABLE LAW

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].)

DISCUSSION

Student's complaint alleges that the individualized education programs of May 15, June 16, and October 27, 2015 did not offer Student a free appropriate public education for the 2015-2016 school year because Student's special day class was relocated from one school site to another, resulting in a longer bus ride, and that the duration and frequency of Student's specialized academic instruction, occupational therapy, language and speech, and adapted physical education were changed and/or not implemented. Student also complains that Parent was not given sufficient opportunity to participate in the IEP process. District's complaint alleges that in October 2015 Parent requested independent educational evaluations in psychoeducational, occupational therapy, language and speech, adapted physical education and assistive technology in disagreement with the October 2014 multidisciplinary assessment that had been the basis of the 2015-2016 FAPE offers, and that although District agreed to fund independent adapted physical education and assistive technology evaluations, it seeks to defend the appropriateness of the other portions of the multidisciplinary assessment.

District moves to consolidate the two cases as involving the same issues and witnesses. Student's Case and District's Case involve common questions of law or fact, specifically, whether the multidisciplinary assessment of October 2014, and the IEP's developed based upon those assessments, offered Student a FAPE for the 2015-2016 school year. Consolidation furthers the interest of judicial economy because the same witnesses and evidence will be presented in both cases on the issues of whether IEP's were specific in their offers and offered an appropriate programs and services. Consolidation will avoid the duplication of time, expense and resources involved in having these matters proceed to hearing separately.

The dates in District's Case are scheduled to occur before the dates scheduled in Student's Case, and District's motion to consolidate is therefore deemed to include a request for continuance of the mediation, prehearing conference and due process hearing dates in District's Case to the dates currently scheduled for Student's Case. OAH has reviewed the request for good cause and considered all relevant facts and circumstances, and the request for continuance is granted. In accordance with OAH scheduling guidelines, multiple days will be reserved for the due process hearing.

ORDER

1. District' motion to consolidate Student's Case (OAH case number 2015110501) and District's Case (OAH case number 2015120001) is granted.
2. Student's Case is designated as the primary case and shall be used for filing all documents in these consolidated matters. The dates in District's case are vacated.

3. District's request to continue the dates in the consolidated matters to the dates currently set in Student's Case is granted.
4. Mediation of the consolidated matters is continued to 9:30 a.m. on December 15, 2015. The parties shall participate in a prehearing conference at 3:00 p.m. on December 28, 2015. OAH will initiate the call. The due process hearing shall be held on January 5-7, 2016, at 9:30 a.m. on the first day, and 9:00 a.m. thereafter, and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.
5. The 45-day timeline for issuance of the decision in the consolidated cases shall be based on the date of the filing of Student's Case.

DATE: December 4, 2015

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings