

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

OAH CASE NO. 2010050623

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT,

LOS ANGELES UNIFIED SCHOOL
DISTRICT,

OAH CASE NO. 2010080196
Primary Case

v.

PARENT ON BEHALF OF STUDENT.

ORDER GRANTING MOTION TO
CONSOLIDATE AND VACATING AND
CONTINUING DATES

On April 14, 2010, Student filed a Request for Due Process Hearing in OAH case number 2010050623 (First Case), naming District. The OAH issued a scheduling order on May 25, 2010. District's request for continuance was granted on July 6, 2010. First Case was set for a pre-hearing conference (PHC) on August 9, 2010 at 10:00 a.m. The Due Process Hearing (DPH) was set for August 16-20 and August 25-27, 2010.

On August 4, 2010, District filed a Request for DPH in OAH case number 2010080196 (Second Case), naming Student. OAH issued a scheduling order on August 6, 2010, setting mediation for August 24, 2010, a PHC on September 1, 2010, and a DPH on September 7, 2010.

On August 4, 2010, District filed a Motion to Consolidate the First Case with the Second Case. On August 9, 2010, counsel for both parties participated in a telephone conference with the undersigned ALJ. Student did not oppose District's Motion to Consolidate. Both parties requested a continuance of the PHC and DPH in the consolidated matter in order to accommodate their estimate of the number of days of hearing on the consolidated issues. For the reasons discussed below, the motion to consolidate is granted, and a continuance is granted for good cause.

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].)

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. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Speedy resolution of the due process hearing is mandated by law and continuance of the hearing may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f)(3).) In ruling upon a motion for continuance, OAH is guided by the provisions found within the Administrative Procedure Act and the California Rules of Court that concern motions to continue. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, 3.1332 .) Generally, continuances of matters are disfavored. (Cal. Rules of Court, 3.1332(c).)

ANALYSIS

Here, the First Case and Second Case involve a common question of law or fact, specifically related services and placement for the 2009-2010 and 2010-2011 school years.

Student's complaint alleges that District denied Student FAPE for the school year 2009-2010 both procedurally and substantively, including inappropriate placement, failure to assess and failure to provide appropriate related services. Student seeks as a remedy prospective placement in a non-public school for school year 2010-2011, compensatory damages, related services and independent assessments. District's complaint seeks an order that Student's June 10 and June 14, 2010, IEPs, which include an offer of placement at a District school with related services, constituted an offer of FAPE for the 2010-2011 school year. District argues that consolidation is appropriate to avoid conflicting results, particularly on the issue of placement.

Student does not oppose the motion. In addition, consolidation furthers the interests of judicial economy because the witnesses and evidence are similar or the same in both cases. Accordingly, consolidation is granted. Good cause exists to vacate and continue the hearing date set for the Second Case based upon the number of issues, estimated number of witnesses and days of hearing.

ORDER

1. District's Motion to Consolidate is granted. Second Case shall be designated as primary under OAH Case Number 2010080196.

2. All dates previously set in OAH Case Number 2010050623 (First Case) are vacated.
3. All dates previously set in OAH Case Number 2010080196 (Second Case) are vacated and continued for good cause.
4. The Prehearing Conference in the consolidated cases shall be held on September 15, 2010, at 10:00 a.m. and the Due Process Hearing in the consolidated cases shall be held on September 29, 30, October 1, 4, 5, 6, 7, and 11, 2010. The first day of hearing will start at 9:30 a.m.
5. 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 2010080196 (Second Case).

Dated: August 9, 2010

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings