

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Consolidated Matters of:  MODESTO CITY SCHOOLS, v.  PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2010100325
<hr/> PARENT ON BEHALF OF STUDENT,  v.  MODESTO CITY SCHOOLS.	OAH CASE NO. 2010100921  ORDER GRANTING MOTION TO CONSOLIDATE

On October 11, 2010, Modesto City Schools (District) filed a Request for Due Process Hearing in OAH case number 2010100325 (First Case), naming Student (Student).

On October 20, 2010, Student filed a Request for Due Process Hearing in OAH case number 2010100921 (Second Case), naming the District.

On October 20, 2010, Student filed a Motion to Consolidate the First Case with the Second Case and to maintain the due process hearing date set in Case Number 2010100325 (First Case).

The District did not file a response to the motion.

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

Here, the First Case and Second Case involve common questions of law and fact, specifically, whether the District may administer a Functional Analysis Assessment (FAA) using District employees, and whether the September 17, 2010 IEP offered by the District constitutes a free appropriate public education (FAPE). The District has not filed opposition to the motion. In addition, consolidation is in the interest of judicial economy because each case will utilize the same witnesses and exhibits. Accordingly, consolidation is granted.

Although, Student did not specifically request a continuance, the District's complaint, as the primary case, does not provide a sufficient timeline to include a resolution session as mandated by Student's complaint nor is there an indication of waiver of the resolution session. Therefore, the due process hearing dates contained in the District complaint (First Case) are vacated and the hearing dates in Student's complaint (Second Case) remain as scheduled.

## ORDER

1. Student's Motion to Consolidate is granted.
2. The hearing dates previously set in OAH Case Number 2010100325 (First Case) are vacated.
3. The Prehearing Conference in the consolidated cases shall be held on December 8, 2010, at 1:30 p.m., and the Due Process Hearing in the consolidated cases shall be held on December 14, 2010, at 9:30 a.m.
4. 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 2010100921 (Second Case).

Dated: October 25, 2010

/s/

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JUDITH PASEWARK  
Administrative Law Judge  
Office of Administrative Hearings