

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

MARTY AND KAREN HORNER,
PARENT(S) ON BEHALF OF JAKE
HORNER, STUDENT,

OAH CASE NO. 2011031368

v.

SUNDALE UNION ELEMENTARY
SCHOOL DISTRICT.

SUNDALE UNON ELEMENTARY
SCHOOL DISTRICT,

OAH CASE NO. 2011030731

v.

MARTY AND KAREN HORNER,
PARENT(S) ON BEHALF OF JAKE
HORNER, STUDENT.

ORDER GRANTING MOTION TO
CONSOLIDATE AND DENYING
MOTION TO CONTINUE

On March 14, 2011, District filed a Request for Due Process Hearing in OAH case number 2011030731 (First Case), naming Parents on behalf of Student (Student).

On March 24, 2011, Student filed a Request for Due Process Hearing in OAH case number 2011031368 (Second Case), naming District.

Also On March 24, 2011, Student filed a Motion to Consolidate the First Case with the Second Case and to vacate and continue the hearing dates and to add additional hearing dates.

District does not object to the motion to consolidate

Consolidation.

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].)

Here, the First Case and Second Case involve common questions of law and fact concerning the appropriateness of District's assessments. The two cases will require testimony from many of the same witnesses and use of many of the same exhibits. District does not oppose the motion. In addition, consolidation furthers the interests of judicial economy by eliminating the need for duplicative proceedings and the potential for inconsistent decisions. The consolidation is granted.

Continuance

A due process hearing must be held, and a decision rendered, within 45 days of receipt of the complaint, unless a continuance is granted for good cause. (Ed. Code, §§ 56502, subd. (f) & 56505, subd. (f)(1)(C)(3).)

Although OAH is inclined to grant a continuance, Student's motion fails to show that the parties met and conferred to determine mutually agreed-upon dates, as requested by OAH. Trial setting conferences are only available under extraordinary circumstances, and this is not such a circumstance. Student may renew his motion to continue when he has obtained agreed upon dates for the continued hearing.

ORDER

1. Student's Motion to Consolidate is granted.
2. All dates previously set in OAH Case number 2011030731 are vacated. 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 2011031368 (Second Case).
3. Student's Motion to Continue is denied. The consolidated cases shall proceed as scheduled in OAH Case Number 2011031368 (Second Case).

Dated: April 1, 2011

/s/

GLYNDA B. GOMEZ
Administrative Law Judge
Office of Administrative Hearings