

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CULVER CITY UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT,

OAH CASE NO. 2011060075

PARENT ON BEHALF OF STUDENT ,

v.

CULVER CITY UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011090039

ORDER GRANTING MOTION TO
CONSOLIDATE; AND DENYING
MOTION TO CONTINUE

On June 1, 2011, the Culver City Unified School District (District) filed a Request for Due Process Hearing against Student, in Office of Administrative Hearings (OAH) case number 2011060075 (First Case). On July 13, 2011, OAH set for the First Case the prehearing conference for October 5, 2011, and the due process hearing for October 11, 12 and 13, 2011.

On September 1, 2011, Student filed a Request for Due Process Hearing against the District, in OAH case number 2011090039 (Second Case). On September 6, 2011, OAH set for the Second Case the prehearing conference for October 24, 2011, and the due process hearing for October 27, 2011.

On September 8, 2011, Student filed a Motion to Consolidate the First Case with the Second Case, and on September 12, 2011, filed a motion to continue the due process hearing dates set for the First and Second Cases.¹

¹ Student's motions for the District to produce records and to move the resolution session to a neutral location shall be ruled upon in separate orders after the District has the opportunity to respond because Student did not serve a copy of the motions on District's legal counsel.

On September 14, 2011, the District filed a response that did not object to Student's motion to consolidate, but raised numerous objections as to whether several of Student's claims were barred by the parties' April 15, 2011 settlement agreement (Settlement Agreement). Additionally, the District objected to Student's request to continue the hearing dates in the First Case.

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].)

The First Case and Second Case involve a common question of law and fact regarding whether the District's right to assess Student pursuant to the terms of the Settlement Agreement. Other issues in Student's complaint regarding the District's compliance with other provisions of the Settlement Agreement, withholding of Student's records and retaliation involve similar evidence and witnesses. Without consolidation, there would be a danger of inconsistent rulings. Therefore, Student's Motion to Consolidate is granted as consolidation sufficiently furthers judicial economy and to prevent inconsistent rulings.

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).)

Student's requests that OAH continue both the hearing dates in both the First and Second Cases based on the District's purported failure to produce documents and need to prepare to hearing. However, Student did not establish good cause for a continuance based on the District's purported failure to produce documents pending a ruling on Student's motion for the District to produce requested documents because Student did not serve a copy of that motion on District's legal counsel. Therefore, Student did not establish good cause to have the hearing set beyond the dates set in the second case.

ORDER

1. Student's Motion to Consolidate is granted.
2. All dates previously set in OAH Case Number 2011060075 [First Case] are vacated. The consolidated cases shall proceed on the dates scheduled in OAH Case Number

2011090039 [Second Case] which are: Mediation on October 5, 2011 at 9:30 a.m., a telephonic prehearing conference on October 24, 2011 at 1:30 p.m. and a due process hearing on October 27, 2011 at 9:30 a.m.

3. 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 2011090039 [Second Case].

4. Student's motion for a continuance is denied without prejudice pending a ruling on Student's motion to produce documents.

5. Student shall serve a copy of future correspondence, documents and motions upon the District's legal counsel.

Dated: September 19, 2011

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings