

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

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| In the Consolidated Matters of: |  |
| PARENT ON BEHALF OF STUDENT,    | OAH CASE NO. 2011070434  |
| v.                              |  |
| POWAY UNIFIED SCHOOL DISTRICT,  |  |
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| POWAY UNIFIED SCHOOL DISTRICT,  | OAH CASE NO. 2011070317  |
| v.                              |  |
| PARENT ON BEHALF OF STUDENT.    | ORDER GRANTING MOTION TO<br>CONSOLIDATE AND DENYING<br>REQUEST FOR CONTINUANCE,<br>WITHOUT PREJUDICE |

On July 8, 2011, District filed a Request for Due Process Hearing in OAH case number 2011070317 (First Case), naming Student as the respondent, and seeking an order permitting it to assess Student pursuant to a May 11, 2011 proposed assessment plan to which parent has not given full consent.

On July 13, 2011, Student filed a Request for Due Process Hearing in OAH case number 2011070434 (Second Case), naming District as the respondent, alleging that District failed in its Child Find obligations to identify and address Student's need for special education and related services, and denied Student a free appropriate public education, first by failing to assess her and then by proposing inappropriate assessments.

On July 17, 2011, Student filed a Motion to Consolidate the First Case with the Second Case and to set new dates for the mediation and due process hearing in the consolidated cases. District did not file a response to the motion.

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 a common question of law or fact, specifically, the parties' respective allegations concerning Student's eligibility for special education, and District's Child Find obligations to identify and address Student's need for special education and related services. In addition, consolidation furthers the interests of judicial economy because the parties and evidence in both cases will overlap. Accordingly, 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).)

Here, Student has requested a continuance of the hearing dates, and OAH is inclined to grant the continuance. However, the parties did not meet and confer regarding new hearing dates as is requested by OAH. Forms are available on the OAH website that explain the procedure. The parties may re-submit the request to continue after they have agreed upon hearing dates.

### ORDER

1. Student's Motion to Consolidate is granted.
2. All dates previously set in the First Case, OAH Case Number 2011070317 are vacated.
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 the Second Case, OAH Case Number 2011070434.
4. Student's Motion to Continue is denied without prejudice. All dates previously set for hearing in this matter in the Second Case, OAH Case Number 2011070434 shall remain as scheduled.

Dated: July 22, 2011

/s/

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JUNE R. LEHRMAN  
Administrative Law Judge  
Office of Administrative Hearings