

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

v.

SAN MATEO-FOSTER CITY SCHOOL  
DISTRICT,

OAH CASE NO. 2011090505

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SAN MATEO-FOSTER CITY SCHOOL  
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2011070524

ORDER GRANTING MOTION TO  
CONSOLIDATE

On July 14, 2011, San Mateo-Foster City School District (District) filed a request for due process hearing (complaint) with the Office of Administrative Hearings (OAH) in OAH case number 2011070524 (First Case), naming Student.

On September 15, 2011, Student filed a complaint in OAH case number 2011090505 (Second Case), naming the District, and also filed a motion to consolidate both cases. The District filed a reply in which it did not oppose consolidation, but objected to continuing the dates for a prehearing conference (PHC) and due process hearing in the First Case.<sup>1</sup>

APPLICABLE LAW

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. (Gov. Code, § 11507.3, subd. (a) [administrative

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<sup>1</sup> The District faxed its nonopposition to OAH on September 13, 2011. However, OAH did not file Student's complaint and motion to consolidate until September 15, 2011.

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].)

### Continuation

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).)

If a student files a request for due process hearing, the commencement of the 45 day time-period for rendering a decision is stayed for 30 days to permit the parties to participate in a resolution session. (Ed. Code § 56501.5.)

## DISCUSSION

Here, the First Case and Second Case involve a common question of law or fact, i.e., whether Student continues to be eligible for special education services. The District did not oppose the motion to consolidate, but asked that OAH maintain previously set dates in the First Case for a PHC on September 19, 2011, and a due process hearing on September 26, 2011, because its case has been pending since July 2011.<sup>2</sup>

Consolidation furthers the interests of judicial economy because, specifically, many of the same witnesses are likely to be called by the parties at hearing, and many of the same documents are likely to be introduced as evidence. However, the Second Case is a Student-filed case, and a resolution session must be held. The consolidated matter cannot go forward on September 26, 2011 because a resolution session will not have been convened by that date. Accordingly, this hearing date must be vacated.

## ORDER

1. Student's Motion to Consolidate is granted.
2. The hearing date of September 26, 2011, in OAH Case Number 2011070524 (First Case), is 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 OAH Case Number 2011090505 (Second Case).

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<sup>2</sup> The PHC was convened on September 19, 2011 and a separate order is being issued concerning the PHC. On September 19, 2011, the motion to consolidate these matters was granted on the record, and following oral argument by the District, its request that OAH not continue the PHC and hearing date previously set in the First Case was denied. The parties subsequently agreed to the PHC and hearing dates that are contained in this order.

4. The Prehearing Conference in the consolidated cases shall be held on October 12, 2011, at 1:30 p.m., and the due process hearing in the consolidated cases shall be held on October 31, through November 2, 2011, beginning at 1:30 p.m. on the first day, and at 9:00 a.m. on all other days.

Dated: September 21, 2011

/s/

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REBECCA FREIE  
Administrative Law Judge  
Office of Administrative Hearings