

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT,

OAH CASE NO. 2012020723

LOS ANGELES UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2011100795

ORDER DENYING STUDENT'S
MOTION TO CONSOLIDATE AND
DENYING STUDENT'S MOTION TO
CONTINUE

On October 24, 2011, Los Angeles Unified School District (District) filed a due process request (District's Complaint) with the Office of Administrative Hearings (OAH) against Parents on behalf of Student (First Action). OAH issued a scheduling order, setting mediation for November 8, 2011, a prehearing conference (PHC) for November 14, 2011, and due process hearing for November 17, 2011. Parents did not appear at the November 8, 2011 mediation. Parents also did not appear at the November 14, 2011 PHC, during which District requested a short continuance because it required three days of hearing. The matter was continued, scheduling a PHC for November 28, 2011, and the due process hearing for December 6, 7, and 8, 2011.

On November 22, 2011, attorney Andrew M. Bratt filed a notice of representation of Parents on behalf of Student. Mr. Bratt concurrently filed a motion to continue the due process because he was "pursuing a new career" effective the following Monday, November 28, 2011, asserting that Parents needed time to find new counsel. On November 22, 2011, OAH granted the request to continue the PHC, only, to November 30, 2011.

Mother appeared on behalf of Student at the November 30, 2011, PHC and asked that the PHC and hearing be continued to allow her time to obtain new counsel, stating that she had already scheduled an appointment with a new attorney. For this reason only, OAH granted Mother's request, scheduling a PHC for January 9, 2012, and due process hearing for January 17, 18 and 19, 2012. As reflected in the Order issued after PHC, Mother stated she understood that no further continuances would be granted because Student was without

counsel. Mother further acknowledged that, should she not timely obtain counsel, she must communicate with the District's counsel as the PHC and hearing dates approach.

On Friday, January 6, 2012, attorney William P. Morrow filed a Notice of Representation on behalf of Student. On Monday morning, January 9, 2012, Mr. Morrow filed a Motion for Continuance on behalf of Student. On the afternoon of January 9, 2012, Mr. Morrow appeared at the PHC for the Student and argued the continuance motion. District opposed, noting that it filed in October 2011, and was entitled to a timely determination. Student's motion to continue was granted solely because newly retained counsel required an opportunity to prepare for hearing. The newly scheduled dates were March 7, 2012 for the PHC, and March 13, 14, 15, and 19, 2012 for the hearing.

On February 21, 2012, Student filed a Request for Due Process (Student's Complaint) against District (Second Action). On February 22, 2012, OAH issued a scheduling order in the Second Action, setting mediation for March 27, 2012, a PHC for April 9, 2012, and the hearing for April 12, 2012.

On February 21, Student also filed a motion to consolidate the two actions, moving to continue the PHC and hearing dates presently scheduled in the First Action. On February 27, 2012, District filed a response, stating that it does not object to the actions' consolidation but opposes the continuance, noting that the District is entitled to a timely determination of its complaint, filed almost five months before in October 2011.

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].)

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).)

DISCUSSION

Student contends that consolidation would further the interests of judicial economy, because the two actions involve similar issues, witnesses and documentation. However, Student's motion states that Student's action "goes much further than asserting or requesting a ruling that the District did not offer or provide a FAPE at the May 3, 2011 IEP meeting." In fact, Student states that his filing ". . . additionally raises no less than 15 factually detailed and specific issues. . ." Student's motion further asserts that his complaint ". . . unquestionably extends to issues pertaining to the 2011 extended school year . . . covers a

longer relevant period of time, many more issues to resolve and requires more extensive preparation for hearing.”

District does not oppose consolidation, but it strongly opposes any continuance of the presently scheduled hearing of March 13, 14, 15, and 19, 2012. However, Student’s motion emphasizes that the consolidated matters would require more extensive preparation and more than four days for hearing.

District asserts in its opposition to continuance that it is entitled to a timely determination of its complaint. District argues that this would be the fourth continuance. At the last PHC, OAH granted Student’s request to continue for the sole purpose of allowing the Student’s newly retained attorney to prepare for the March 2012 hearing in the District’s action. District also notes that Student seeks to continue the hearing to “mutually agreeable dates” but that Student’s counsel made no effort to meet and confer with District’s counsel before filing the motion.

Student’s motion to consolidate is denied because, as emphasized in the moving papers, Student’s complaint includes substantive additional issues covering a much longer timeline than District’s complaint. Though the two actions have some issues, witnesses and evidence in common, the Student’s complaint would substantially extend the time needed for hearing.

Student’s motion to continue is also denied. Consolidation would require a continuance because of the need for greater preparation and additional time for hearing. District strongly opposes continuance. District is entitled to a timely determination of its complaint, there have already been three continuances, and the last continuance was for the purpose of allowing Student’s new counsel to prepare for the March 2012 hearing.

Finally, consolidation without a continuance would mean that Student’s action would go to hearing without a resolution session and without mediation. This is contrary to the IDEA’s intent of assuring adequate opportunity for the parties to resolve the dispute and avoid a costly due process hearing.

ORDER

1. Student’s Motion to Consolidate is denied.
2. Student’s Motion to Continue is denied. All dates set for hearing in both matters shall remain as scheduled.

Dated: February 29, 2012

/s/

CLIFFORD H WOOSLEY
Administrative Law Judge
Office of Administrative Hearings