

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN DIEGO UNIFIED SCHOOL
DISTRICT.

OAH CASE NOS. 2011101028 and
2011080882

ORDER GRANTING MOTION TO
CONSOLIDATE AND SETTING
MEDIATION, PREHEARING
CONFERENCE AND DUE PROCESS
HEARING

On November 2, 2011, Administrative Law Judge (ALJ) Timothy L. Newlove, from the Office of Administrative Hearings (OAH), convened the scheduled prehearing conference (PHC) in OAH case number 2011080882. Amy Bozone, attorney at law, appeared at the PHC on behalf of the San Diego Unified School District (District). Marci Tiffany, attorney at law, appeared at the PHC on behalf of Student. The parties discussed and argued Student's pending motion to consolidate which is decided as follows.

On August 23, 2011, the District filed with OAH a Mediation and Due Process Hearing Request that named Student. OAH assigned the District complaint case number 2011080882. Currently scheduled in the District matter is a due process hearing set for November 15, 16 and 17, 2011.

On October 31, 2011, Student filed with OAH a Due Process Complaint that named the District. OAH assigned the Student complaint case number 2011101028. Currently scheduled in the Student matter is a mediation set for December 6, 2011, a prehearing conference set for December 21, 2011, and a due process hearing set for December 27, 2011.

Also on October 31, 2011, Student filed a motion to consolidate OAH case numbers 2011080882 and 2011101028. Counsel for the District has filed with OAH an opposition to this request, and counsel for Student has filed a reply to the opposition.

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 District and the Student cases involve a common question of law or fact, specifically, whether the District's offer to replace Student's one-to-one NPA aide with a District Behavioral Support Assistant was appropriate. In addition, consolidation will further the interests of judicial economy because both cases share common witnesses and documentary evidence. Accordingly, consolidation is granted.

During the telephone conference, the parties agreed upon mutually convenient mediation, prehearing conference and due process hearing dates for the consolidated matters.

ORDER

1. Student's motion to consolidate OAH case numbers 2011080882 and 2011101028 is granted.
2. All dates previously set in OAH case number 2011080882 [District complaint] and OAH case number 2011101028 [Student complaint] are vacated.
3. For the consolidated cases, OAH shall issue a Scheduling Order with the following mutually convenient dates: a mediation set for December 6, 2011, starting at 9:30 a.m. at the District offices; a prehearing conference set for Wednesday, January 4, 2012, starting at 1:30 p.m.; and a due process hearing set for January 9, 10, 11 and 12, 2012.
4. 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 2011101028 [Student complaint].

Dated: November 02, 2011

/s/

TIMOTHY L. NEWLOVE
Presiding Administrative Law Judge
Office of Administrative Hearings