

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Consolidated Matters of:  PARENT ON BEHALF OF STUDENT,  v.  NEWPORT-MESA UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2011110261
NEWPORT-MESA UNIFIED SCHOOL DISTRICT,  v.  PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2012020698  ORDER GRANTING MOTION TO CONSOLIDATE AND GRANTING MOTION TO CONTINUE

On November 3, 2011, Student filed a Request for Due Process Hearing (complaint) in OAH case number 2011110261 (First Case), naming Newport-Mesa Unified School District (District). On December 16, 2011, OAH granted District's unopposed motion to continue and set the prehearing conference for February 22, 2012 and the due process hearing for February 27, 28, and 29, 2012.

On February 16, 2012, District filed a Request for Due Process Hearing in OAH case number 2012020698 (Second Case), naming Student. District concurrently filed a Motion to Consolidate the First Case with the Second Case and to continue the due process hearing dates set in Case Number 2011110261 (First Case). District did not ask for specific dates or demonstrate that it had attempted to get agreement to specific dates from Student, as is generally required by OAH.

On February 17, 2012, Student filed a notice of non-opposition, agreeing with District's contention that consolidation would serve the interests of judicial economy because the two matters involve the same parties, much of the same documentary evidence, and many of the same witnesses, as well as intertwined issues for determination.

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 and fact, Student does not oppose the motion, and consolidation furthers the interests of judicial economy because the two matters involve the same parties, much of the same documentary evidence, and many of the same witnesses.

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).)

District's motion to continue the hearing in the First Case does not contain any dates upon which the parties have agreed. However, District has indicated that it estimates it needs five days for its case and would like more time to prepare for the consolidated matters. Based on District's failure to name specific dates or a time period, it can only be assumed that using the dates established for the Second Case would provide a sufficient continuance. Accordingly, a continuance of the consolidated matters will be granted to the dates set for the Second Case. OAH has added additional hearing dates based on District's time estimate.

#### ORDER

1. District's Motion to Consolidate is granted.
2. All dates previously set in OAH Case Number 2011110261 (First Case) 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 OAH Case Number 2011110261 (First Case).
4. The continued dates for the consolidated matter shall be: Mediation – March 6, 2012 at 9:30 a.m., Telephonic PHC – March 14, 2012 at 1:30 p.m., Due Process Hearing – March 19-22, 26-29, 2012 at 1:30 p.m. the first day, 9:00 a.m. after, unless otherwise ordered at the PHC.

Dated: February 21, 2012

/s/  
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CLIFFORD H WOOSLEY  
Administrative Law Judge  
Office of Administrative Hearings