

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENTS ON BEHALF OF STUDENT,

OAH CASE NO. 2012010640

v.

WHITTIER CITY SCHOOL DISTRICT
AND WHITTIER AREA COOPERATIVE
SPECIAL EDUCATION PROGRAM.

WHITTIER CITY SCHOOL DISTRICT,

OAH CASE NO. 2011100451

v.

PARENTS ON BEHALF OF STUDENT.

ORDER GRANTING MOTION TO
CONSOLIDATE AND DENYING
MOTION TO CONTINUE

On October 13, 2011, the Whittier City School District (District) filed a Request for Due Process Hearing in OAH case number 2011100451 (First Case), naming Parents on behalf of Student.

On January 24, 2012, Parents on behalf of Student filed a Request for Due Process Hearing in OAH case number 2012010640 (Second Case), naming District and the Whittier Area Cooperative Special Education Program (WACSEP), with a concurrent motion in the First Case to consolidate the First Case with the Second Case and to continue the due process hearing date in the consolidated cases to a “mutually agreeable hearing date.” District does not object to the motion.

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. (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, both cases seek a determination of whether the District's individualized education program (IEP) of June 10, 2011, offered Student a free appropriate public education (FAPE) for the 2011-2012 school year. In addition, consolidation furthers the interests of judicial economy because the Second Case also seeks a determination of whether the District's IEP of September 7, 2010, offered Student a FAPE for the 2010-2011 school year, and as the District's offer of placement, program and related services for both school years was substantially the same, separate hearings would result in duplicative evidence and an undue consumption of time. 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, the parties have 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. Trial setting conferences are only held in extraordinary circumstances, and the failure of the parties to provide the "mutually agreed" dates they want is not one of them. The parties may re-submit the request to continue after they have agreed upon hearing dates.

Until and unless the parties re-submit the request to continue with mutually agreed upon hearing dates, the 45-day timeline for issuance of the decision in the consolidated cases shall be based on the date of the filing of the due process request in the Second Case, and all hearing dates and timelines shall proceed in the consolidated cases as currently calendared in the Second Case.

ORDER

1. The Motion to Consolidate by Parents on behalf of Student is granted.
2. All dates previously set in OAH Case Number 2011100451 (First Case) are vacated.
3. The Motion to Continue by Parents on behalf of Student is denied without prejudice to the parties refiling the motion in conformance with OAH practices. The Mediation in the consolidated cases shall be held on February 28, 2012 at 9:30 a.m., the Prehearing Conference in the consolidated cases shall be held on March 12, 2012, at 1:30 p.m., and the Due Process Hearing in the consolidated cases shall be held on March 19, 2012, at 1:30 p.m. on the first day.

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 2012010640 (Student's Case).

Dated: January 30, 2012

/s/

ALEXA HOHENSEE
Administrative Law Judge
Office of Administrative Hearings