

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

SAN DIEGUITO UNION HIGH SCHOOL  
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2012060725

ORDER DENYING MOTION TO  
CONSOLIDATE DENYING MOTION  
TO CONTINUE

On May 2, 2012, Parent on behalf of Student (Student) filed a Request for Due Process Hearing in OAH case number 2012050089 (First Case), naming San Dieguito Union High School District (District).

On June 19, 2012 the District filed a Request for Due Process Hearing in OAH case number 2012060725 (Second Case), naming Student.

On July 9, 2012, the District filed a Motion to Consolidate the First Case with the Second Case and to continue the due process hearing date set in Case Number 2012050089 (first case).

On July 9, 2012, Student filed an objection to consolidation on the ground that (1) Student Compliance Complaint with the California Department of Education is tolled pending OAH determination of the District's issues; (2) Student's request for Stay Put was partially denied; and (3) Student has not been in school since May 22, 2012, and should commence the 11<sup>th</sup> grade in August 2012

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 do indeed involve common questions of law and fact Further, from a practical standpoint would clearly be in the interests of judicial economy consolidate the two cases, as the issues presented by each party are either a mirror

image of or closely related to each other. This, however, is not the primary concern for due process hearings under the IDEA when considering consolidation of 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).)

Student's case was continued at its Pre-Hearing Conference (PHC) on June 11, 2012, to a due process hearing date commencing September 4, 2012. The District was well aware of Student's issues and the hearing date set in that matter when it filed its own request for due process hearing on June 19, 2012. Rather than request consolidation concurrently with the filing of its complaint, the District instead waited to raise the issue at the July 8, 2012 PHC on the District's case, and subsequently file its motion the next day on July 9, 2012. Further, the District provides no good cause for consolidation and continuance when balanced against Student's objections. A determination of whether the District's offer of placement and services constitutes a FAPE in the least restrictive environment as contained in the District's complaint may well render many of Student's issues moot or provide the parties with factual findings which should lead to settlement of any issues remaining in Student's complaint. Given that Student ceased attending school in May 2012, and should begin the 11<sup>th</sup> grade in August 2012, it is in Student's best interest that the determination of facts and legal issues is made sooner rather than later.

The District's motion to continue the hearing fails to demonstrate good cause for consolidation and continuance.

#### ORDER

1. The District's Motion to Consolidate is denied.

Dated: July 13, 2012

/s/  
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JUDITH PASEWARK  
Administrative Law Judge  
Office of Administrative Hearings