

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

LAS VIRGENES UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2013071203

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LAS VIRGENES UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2013080387

ORDER GRANTING MOTION TO
CONSOLIDATE AND GRANTING
MOTION TO CONTINUE DISTRICT'S
CASE

On July 29, 2013, District filed a Request for Due Process Hearing in OAH Case No. 2013071203 (District's Case), naming Parent on Behalf of Student (Student). OAH issued a scheduling order in District's case, setting the prehearing conference (PHC) for August 23, 2013, and the Due Process Hearing (DPH) for August 29, 2013, continuing day to day, as needed, Monday through Thursday, as needed at the discretion of the Administrative Law Judge (ALJ).

On August 13, 2013, Parent filed a Request for Due Process Hearing in OAH Case No. 2013080387, naming District. OAH issued a scheduling order in Student's case, setting the mediation for September 12, 2013, the PHC for September 20, 2013, 3 p.m., and the DPH for October 2, 2013, 9:30 a.m., and continuing day to day, Monday through Thursday, at the discretion of the ALJ.

On August 13, 2013, the parties filed a joint stipulated Motion to Consolidate District's Case with Student's Case, and continuing the District's case to the dates in the OAH scheduling order for Student's case, on the ground that both cases include common issues of fact and law.

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, Student's Case and District's Case address common questions of fact and law regarding a series of assessments District conducted during 2013 in the areas of psychoeducation, speech and language, and occupational therapy, and the individualized education program (IEP) meeting and offer of April 2013. From the pleadings it appears that consolidation will also further the interests of judicial economy as the same witnesses will be required to testify about the issues in both cases. 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).)

The joint stipulated motion of the parties to consolidate the cases and continue the due process hearing for District's case to the dates scheduled for Student's case is granted for good cause, as the cases present common issues of fact and law, District's case has never been continued, and the dates set for Student's case are within 35 days of the days set for District's case. Accordingly, the joint stipulated motion to continue District's case is granted. The dates for the consolidated matter are specified in the Order below.

ORDER

1. The joint stipulated Motion to Consolidate is granted.
2. All dates previously set in District's case (OAH Case No. 2013071203) are vacated.
3. The joint stipulated Motion to Continue District's Case is granted. The continuance is effective the date of this Order.
4. The consolidated matter shall proceed according to the scheduling order in Student's Case, with further clarification as follows:
 - Mediation: September 12, 2013, 9:30 a.m. to 4:30 p.m.
 - PHC: September 20, 2013, 3 p.m.

DPH: October 2 and 3, 2013, 9:30 a.m., October 7, 2013, 1:30 p.m., October 8, 9, and 10, 2013, 9:30 a.m., and continuing day to day, Monday through Thursday, as needed, at the discretion of the ALJ. [The parties should anticipate, that if, necessary, the ALJ shall continue the matter until concluded the next week, beginning on October 14, 2013.]

5. 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 Student's Case (OAH Case Number 2013080387).

6. The Student's Case shall be the Primary Case, and the District's Case the Secondary Case. All information pertaining to the consolidated matter, including pleadings and Orders, shall be filed in the Primary Case.

Dated: August 16, 2013

/s/

EILEEN COHN
Administrative Law Judge
Office of Administrative Hearings