

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

DRY CREEK JOINT ELEMENTARY
SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT ,

OAH CASE NO. 2013090567

PARENT ON BEHALF OF STUDENT ,

v.

DRY CREEK JOINT ELEMENTARY
SCHOOL DISTRICT AND PLACER
COUNTY OFFICE OF EDUCATION.

OAH CASE NO. 2013070737

ORDER GRANTING MOTION TO
CONSOLIDATE AND GRANTING
MOTION TO CONTINUE

On July 16, 2013, Student filed a Request for Due Process Hearing (Student's complaint) against the Dry Creek Joint Elementary School District (District) and Placer County Office of Education (PCOE). The Office of Administrative Hearings (OAH) designated Student's complaint as Case Number 2013070737 (Student's Case).

On September 17, 2013, the District filed a Request for Due Process Hearing (District's complaint) against Student. OAH designated District's complaint as Case Number 2013090567 (District's Case).

On September 19, 2013, the parties all requested that the two cases be consolidated. All requested that the consolidated matters be continued and that the prehearing conference and due process hearing dates be scheduled in accordance with the dates proposed and agreed to by all three parties. As discussed below, the parties' request to consolidate the cases and their request to continue the dates are granted.

APPLICABLE LAW

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].)

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Speedy resolution of the due process hearing is mandated by law and continuance of the hearing may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f)(3).) In ruling upon a motion for continuance, OAH is guided by the provisions found within the Administrative Procedure Act and the California Rules of Court that concern motions to continue. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, rule 3.1332.) Generally, continuances of matters are disfavored. (Cal. Rules of Court, rule 3.1332(c).)

DISCUSSION

Consolidation

Student's case involves five issues and several sub-issues covering the 2011-2012, 2012-2013 and 2013-2014 school years. Essentially, the complaint alleges that at various times during the relevant period, District and PCOE substantively and procedurally denied Student a free appropriate public education (FAPE) due to many failures by either or both as it relates to Student's goals, placement, program and services, among other things. On its part, District's complaint raises two issues: 1) whether its individualized education program (IEP) offer for the 2013-2014 SY is FAPE in the least restrictive environment, and 2) whether District may conduct a comprehensive psychoeducational assessment of Student pursuant to its assessment plan dated September 12, 2013 without parental consent.

While the time periods covered by the two cases are different, the two cases are similar, and consolidating the cases will promote judicial economy. Both cases involve the same parties and cover the same or similar timelines and issues. The issues raised in both cases involve District's and PCOE's obligations to provide FAPE to Student, and whether District, during the relevant periods, either or both met their procedural and substantive obligations to provide Student with a FAPE through the IEP process. The cases present common questions of law and facts and resolving the issues raised in both cases would involve the analysis of the same questions of law and facts. Evaluating and addressing the issues would involve much of the same evidence and witnesses. Therefore, consolidation furthers the interests of judicial economy and accordingly, consolidation is granted.

Request for Continuance

The parties' request to schedule the PHC on November 25, 2013, and the due process hearing (DPH) on December 2-5, 2013 in this matter is deemed by OAH a request for continuance by the parties. OAH has evaluated parties' request to continue the dates for good cause and good cause is established. The dates for the PHC and DPH in the consolidated matters are indicated below.

ORDER

1. Parties' Request to Consolidate is granted.
2. All dates previously set in OAH Case Number 2013070737 (Student's Case) are vacated.
3. The consolidated matters shall proceed based on the timeline established in OAH Case Number 2013090567 (District's Case).
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 2013090567 (District's Case).
5. The request to continue the PHC and DPH dates is granted. The PHC shall be held on November 22, 2013, at 10:00 AM, and the DPH shall be held on December 2-5, 2013.¹ The DPH shall begin at 1:30 PM on December 2, 2013.

Dated: September 20, 2013

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings

¹ While the parties have requested November 25, 2013 as the PHC date, that date is unavailable and the PHC has been set for November 22, 2013 instead. The parties may request an alternative PHC dates, if November 22, 2013 is not a good day for any of the parties.