

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

OAH Case No. 2014060819

v.

LINCOLN UNIFIED SCHOOL DISTRICT,

PARENT ON BEHALF OF STUDENT,

OAH Case No. 2014070965

v.

LINCOLN UNIFIED SCHOOL DISTRICT.

ORDER GRANTING MOTION TO
CONSOLIDATE AND GRANTING
MOTION TO CONTINUE

On June 13, 2014, Student filed a Request for Due Process Hearing naming Lincoln Unified School District (Lincoln) in case number OAH 2014060819 (First Case). On July 22, 2014, Student filed another Request for Due Process Hearing naming Lincoln in case number OAH 2014070965 (Second Case).

On July 23, 2014, Lincoln filed a Motion to Consolidate the First Case with the Second Case and to continue the due process hearing date set in the First Case.

On July 30, 2014, Student's father informed OAH via telephone that he opposed the Motion to Consolidate and that he intended to submit a written opposition later that day. No written opposition was received; however, OAH considers it a contested motion.

APPLICABLE LAW

Consolidation

No statute or regulation specifically provides a standard for deciding a motion to consolidate special education cases. OAH will generally consolidate matters involving common legal or factual questions, the same parties, and when judicial economy is served 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].)

Continuance

A due process hearing must be conducted and a decision rendered within 45 days of receiving 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

Here, the First Case and Second Case involve common legal and factual questions. The issues Student raised in each complaint require additional clarification during the prehearing conference. Student alleges in both complaints, however, that Lincoln denied him a free appropriate public education (FAPE) in that, “from September 4, 2012 to September 20, 2004 [sic], Student received no education of any kind whatsoever” (First Case) and that Lincoln denied him FAPE, “in the 2011-2012 ESY...[and] in 2013-2014 ESY” (Second Case). Student asserts in both complaints that the denial of FAPE has caused him to be credit deficient and in jeopardy of not meeting graduation requirements. Student seeks overlapping remedies in each case, namely academic tutoring, the Lindamood-Bell program, placement at Fusion Academy, and travel expenses.

In addition, consolidation furthers judicial economy because the cases involve the same parties and likely many of the same witnesses. Moreover, because each case includes overlapping time periods one hearing avoids risking inconsistent rulings. Accordingly, consolidation is granted.

When consolidation is granted, OAH designates one case as the primary case. In this case, OAH Case No. 2014070965, Second Case, is designated as primary and the applicable timelines in that case will apply.

Continuance

A due process hearing must be held, and a decision rendered, within 45 days of receiving the complaint, unless a continuance is granted for good cause. (Ed. Code, §§ 56502, subd. (f) & 56505, subd. (f)(1)(C)(3).)

Lincoln filed a Motion to Continue the consolidated hearing in the event consolidation was granted. Lincoln asserts that the resolution period in the Second Case has not run, that mediation is still available in that case, and that Lincoln needs additional time to prepare for a due process hearing in light of the specific claims asserted in the Second Case. Lincoln has established good cause to continue the matter to the dates set in the Second Case.

ORDER

1. Lincoln's Motion to Consolidate is granted.
2. All dates previously set in OAH Case Number 2014060819 (First Case) are vacated.
3. Lincoln's Motion to Continue is granted. The consolidated matter will now be scheduled for mediation on August 26, 2014, from 9:30 AM to 4:30 PM; a telephonic prehearing conference on September 8, 2014, at 10:00 AM; and the due process hearing commencing on September 17, 2014, at 9:30 AM and shall continue day-to-day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge. Subsequent hearing days will begin at 9:00 AM.
4. The timeline for issuing the decision in the consolidated cases shall be based on the filing date in OAH Case Number 2014070965 (Second Case).

DATE: July 31, 2014

/s/

JOY REDMON
Administrative Law Judge
Office of Administrative Hearings