

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

WHITTIER UNION HIGH SCHOOL
DISTRICT,

v.

PARENT on behalf of STUDENT.

OAH CASE NO. 2009040003

WHITTIER UNION HIGH SCHOOL
DISTRICT.,

v.

PARENT on behalf of STUDENT.

OAH CASE NO. 2009040218

ORDER GRANTING DISTRICT'S
MOTION TO CONSOLIDATE

On March 25, 2009, Whittier Union High School District (District) filed a Request for Due Process Hearing, naming Student. This matter was designated as Office of Administrative Hearings (OAH) Case No. 2009040003.

On March 31, 2009, Whittier Union High School District filed another Request for Due Process Hearing, naming the same Student. This matter was designated as OAH Case No. 2009040218.

On April 1, 2009, District filed a motion to consolidate the two cases. It also requested that OAH vacate the dates for each case and set a trial setting conference during which hearing dates could be set in the consolidated cases.

Student did not file a response to District's motion to consolidate.

On April 2, 2009, OAH issued a Scheduling Order and Notice of Due Process Hearing and Mediation in OAH Case No. 2009040003. The Due Process Hearing was set for May 26, 2009, at 9:30 a.m., with a telephonic prehearing conference scheduled for May 18, 2009, at 10:00 a.m. Mediation was set for May 6, 2009, at 9:30 a.m.

On April 8, 2009, OAH issued a Scheduling Order and Notice of Due Process Hearing and Mediation in OAH Case No. 2009040218. The Due Process Hearing was set for June 2, 2009, at 9:30 a.m., with a telephonic prehearing conference scheduled for May 22, 2009, at 1:30 p.m. Mediation was set for May 12, 2009, at 9:30 a.m.

On April 10, 2009, Student filed a request to continue the dates set in OAH Case No. 2009040003.

DISCUSSION

Consolidation

OAH will generally consolidate matters that involve common questions of law and/or fact involving the same parties. The impetus is greater when consolidation of the matters furthers the interests of judicial economy and will obviate potentially inconsistent rulings. While no statute or regulation specifically provides a standard to be applied in deciding a motion to consolidate special education cases, California statutes offer, by analogy, a standard appropriate to special education cases. Specifically, Government Code section 11507.3, subdivision (a), provides that an administrative law judge “may” order pending administrative proceedings consolidated if they involve “a common question of law or fact” In addition, California Code of Civil Procedure section 1048, subdivision (a), applies the same standard to the consolidation of civil cases.

The above-titled cases generally involve common questions of law and fact, and the cases involve the same parties. In OAH Case No. 2009040003, District requests a ruling from OAH that Student’s request that District fund an independent educational evaluation was unwarranted because District’s 2008 evaluation of Student was appropriate. In OAH Case No. 2009040218, District requests a ruling from OAH that Student’s May 2008 individual education plan was legally appropriate for Student. The underlying facts in both cases involve District’s assessments leading up to Student’s May 2008 individual education plan.

In addition, the hearings in each case would involve many of the same witnesses. Therefore, consolidation furthers the interests of judicial economy.

Continuance

Education Code sections 56502, subdivision (f), and 56505, subdivision (f)(2)(C)(3), require that a hearing be conducted and a decision rendered by OAH within 45 days of receipt of the complaint unless an extension is granted. Speedy resolution of due process hearings is mandated by law and continuance of due process hearings may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f)(2)(C)(3).)

Student’s request for continuance of the hearing in OAH Case No. 2009040003 is based on Student’s mother’s medical condition, and is accompanied by a letter from Student’s mother’s physician stating that Student’s mother is scheduled for surgery on April 2, 2009, and may return to work or school on June 3, 2009. Student’s mother has requested a

continuance of the hearing dates until June 20, 2009, or thereafter, in order to allow her time to prepare for hearing after her surgery.

Student's request to continue the hearing was filed with OAH on April 10, 2009, and District has not yet had three business days to respond to the request. Therefore, it is unknown at this time whether District will oppose that request.

Except in unusual circumstances, OAH prefers that the parties meet and confer prior to requesting a continuance, and agree on alternative hearing dates. This matter presents unusual circumstances given that Student's mother has represented that she is having health difficulties, she is not represented by counsel, the cases are being consolidated for hearing, and District has requested a trial setting conference. Therefore, the District's request to set a trial setting conference to establish hearing dates is granted.

ORDERS

1. District's Motion to Consolidate is granted, and the above-titled cases are consolidated.
2. All dates previously set for OAH Case No. 2009040003 and OAH Case No. 2009040218 are vacated.
3. OAH defers ruling on Student's Motion to Continue at this time because District has not had three (3) business days to respond. OAH will rule on the motion at the trial setting conference.
4. The parties shall participate in a telephonic trial setting conference on April 20, 2009, at 11:00 a.m. OAH will initiate the phone call. Prior to the trial setting conference, the parties shall confer regarding hearing dates, and shall be prepared to present agreed-upon hearing dates to the judge at the trial setting conference.
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 OAH Case No. 2009040218.

Dated: April 13, 2009

/s/

RALPH VENTURINO
Administrative Law Judge
Office of Administrative Hearings