

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT on behalf of STUDENT,

v.

TEMECULA VALLEY UNIFIED SCHOOL
DISTRICT,

OAH CASE NO. 2009050559

TEMECULA VALLEY UNIFIED SCHOOL
DISTRICT,

OAH CASE NO. 2009060691

v.

PARENT on behalf of STUDENT.

ORDER GRANTING MOTION TO
CONSOLIDATE AND DENYING
MOTION TO CONTINUE

On May 12, 2009, attorney Ellen Dowd, on behalf of Student, filed a Request for Due Process Hearing against the Temecula Valley Unified School District (District). This matter was designated as OAH Case No. 2009050559.

On June 9, 2009, OAH issued a Notice of Due Process Hearing, Prehearing Conference and Mediation in OAH Case No. 2009050559. The Prehearing Conference is scheduled for June 29, 2009, at 1:30 p.m., and the Due Process Hearing for July 7-10 and 13, 2009.

On June 12, 2009, attorney Cynthia D. Vargas, on behalf of the District, filed a Request for Due Process Hearing against the Student. This matter was designated as OAH Case No. 2009060691.

On June 12, 2009, OAH issued a Notice of Due Process Hearing, Prehearing Conference and Mediation in OAH Case No. 2009060691. The Prehearing Conference is scheduled for July 6, 2009, at 1:30 p.m., and the Due Process Hearing for July 13, 2009.

On June 12, 2009, the District filed a Motion to Consolidate OAH Case No. 2009050559 with OAH Case No. 2009060691 and to continue the due process hearing dates set in both cases.

On June 15, 2009, Ms. Dowd filed a response opposing the Motion to Consolidate. On June 16, 2009, the District submitted a correction to its Motion to Consolidate, and requested hearing dates of August 17 through 25, 2009. On June 16, 2009, Student submitted an opposition to the District's Motion to Consolidate, and stated if OAH ordered the matters consolidated Student opposes continuing the dates set for OAH Case No. 2009050559.

DISCUSSION

Consolidation

OAH will generally consolidate matters that involve a common question of law and/or fact and that involve the same parties, and 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. 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 . . ." 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 or fact regarding Student's unique needs, Student's need for a non-public school placement, and whether Student made meaningful educational progress during the past two school years in a District program. In addition, consolidation furthers the interests of judicial economy because both cases will involve the same witnesses, evidence and questions of law. Therefore, the matters are consolidated.

Continuance

Education Code sections 56502, subdivision (f), and 56505, subdivision (f)(1)(C)(3), require that a hearing be conducted and a decision rendered 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)(1)(C)(3).)

The District's motion to continue the hearing fails to demonstrate good cause for a continuance for either case. Absent a showing of good cause, the District's motion to continue is denied. Moreover, the facts and legal questions regarding whether the District's prior and present offer of services and placement provide Student with a FAPE are substantially similar and are presently scheduled for similar dates. The cases involve similar witnesses, evidence and legal questions.

ORDERS

1. The District's Motion to Consolidate is granted, and the above-titled cases are consolidated.
2. All dates previously set for proceedings for OAH Case No. 2009060691 are vacated.
3. The District's Motion to Continue is denied. The Prehearing Conference in the consolidated cases shall be held on June 29, 2009, at 1:30 p.m., and the Due Process Hearing on July 7 through 10, and July 13, 2009.
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 No. 2009060691.

Dated: June 17, 2009

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings