

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENTS on behalf of STUDENT,

v.

NEWPORT-MESA UNIFIED SCHOOL
DISTRICT,

OAH CASE NO. 2009061375

NEWPORT-MESA UNIFIED SCHOOL
DISTRICT,

v.

PARENTS on behalf of STUDENT.

OAH CASE NO. 2009070369

ORDER GRANTING MOTION TO
CONSOLIDATE; GRANTING MOTION
TO CONTINUE

On June 22, 2009, Student filed with the Office of Administrative Hearings (OAH) a due process hearing request (complaint) against the Newport-Mesa Unified School District (District). This matter was designated as OAH Case No. 2009061375.

On July 2, 2009, OAH issued a Scheduling Order and Notice of Due Process Hearing in OAH Case No. 2009061375. The Prehearing Conference is scheduled for August 10, 2009, at 1:30 p.m., and the Due Process Hearing for August 18, 2009.

On July 6, 2009, the District filed a Request for Due Process Hearing against the Student. This matter was designated as OAH Case No. 2009070369.

On July 13, 2009, OAH issued a Scheduling Order and Notice of Due Process Hearing in OAH Case No. 2009070369. The Prehearing Conference is scheduled for July 27, 2009, at 10:00 p.m., and the Due Process Hearing for August 4, 2009.

On July 22, 2009, the parties filed a joint Motion to Consolidate OAH Case No. 2009061375 with OAH Case No. 2009070369, and to continue the mediation, prehearing conference and due process hearing dates in the consolidated matters.

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 and whether the District’s May 4, 2009 individualized educational program provides Student with a free appropriate public education. Further, the two parties jointly request that the cases be consolidated. 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 ordered 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).)

Student’s and the District’s joint motion to continue the hearing demonstrates good cause for a continuance in that both matters should be continued to allow the parties to participate in mediation and to the ensure availability of the parties and witnesses. Therefore, the motion to continue is granted.

ORDERS

1. Student’s and the District’s joint Motion to Consolidate is granted, and the above-titled cases are consolidated.
2. All dates previously set for proceedings for OAH Case Nos. 2009061375 and 2009070369 are vacated.
3. Student’s and the District’s joint Motion to Continue is granted. The Mediation in the consolidated cases shall be held on October 13, 2009, at 9:30 a.m., the

Prehearing Conference shall be held on October 28, 2009, at 1:30 p.m., and the Due Process Hearing on November 9, 10 and 12, 2009.¹

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. 2009061375.

Dated: July 23, 2009

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings

¹ The parties requested mediation for October 12, 2009, which is a State holiday. The parties requested prehearing conference and hearing dates have been changed because the dates requested were on Fridays when the Office of Administrative Hearings is closed. Prehearing conferences are now scheduled for either Monday or Wednesday.