

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

CORONA-NORCO UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2009090809

ORDER DENYING MOTION TO  
CONSOLIDATE

On February 9, 2009, Corona-Norco Unified School District (District) filed a Request for Due Process Hearing (District's complaint), naming Student as the respondent. This matter was designated as OAH Case No. N2009020286. On February 11, 2009, the Office of Administrative Hearings (OAH) issued a Notice of Due Process Hearing indicating that the due process hearing would be held on March 12, 2009. On March 9, 2009, pursuant to Student's request, OAH continued the due process hearing to May 12-14, 2009 to give Student's mother (Mother) an opportunity to retain counsel. On May 1, 2009, OAH, pursuant to Mother's second request, continued the due process hearing to June 3-5, 2009, in order to accommodate Mother's health issues. On or about June 3, 2009, OAH denied the request of Student's advocate, Jim Peters, to continue the due process hearing, constituting Student's third request. However, OAH granted Mother's oral motion for continuance on June 3, 2009, the fourth request, on the grounds that Mr. Peters had suddenly withdrawn from the case. OAH rescheduled the due process hearing to June 29-30, and July 1, 2009. On June 24, 2009, Mother filed her fifth motion for continuance on the ground that she could not find new counsel and wanted new hearing dates that reconciled with the availability of Student's former advocate, Mr. Peters. OAH denied Mother's request for continuance on June 25, 2009. On June 29, 2009, Mother filed her sixth request for continuance citing health issues concerning her father, which OAH granted on June 29, 2009. OAH set new hearing dates for July 27-30, 2009. On July 23, 2009, OAH denied Student's seventh request for continuance. However, after Mother filed a motion for reconsideration on July 26, 2009 which included a sworn declaration from Mother's physician that substantiated Mother's health issues, OAH granted Mother's request for continuance, and set new hearing dates for September 22-23, and 29-30, 2009.

On Friday, September 18, 2009, Student filed a due process complaint naming District as the respondent, as well as a motion to consolidate Student's complaint with District's complaint. In his complaint, Student indicated that he will need 10 days to present his case in chief. On September 21, 2009, District filed an opposition to Student's motion to consolidate.

Student contends that the matters should be consolidated, as they similarly concern FAPE issues for the 2008-2009 and 2009-2010 school years, and therefore involve common questions of law or fact. District contends that the matters do not involve common questions of fact of law, as Respondent's case concerns two school years (2008-2009 and 2009-2010), which involve three IEPs years ( May 2007 through October 2008; October 2008 through October 2009; and October 2009 through June 2010), while District's case involves only one IEP year (October 30, 2008 through October 29, 2009). District also contends that because Student's case involves three IEPs, Student's proposed resolutions are broader in scope and significantly differ from District's proposed resolutions. In addition, District contends that its case involves issues concerning the appropriateness of its assessment plan provided to Student's parents on October 30, 2008, which involves entirely different issues of law and fact than the issues presented in Student's complaint. District also contends that consolidation will not result in judicial economy, as District's case is currently set for four days of hearing, and Student has requested 10 days to present his case. In addition, District contends that hearing the cases separately will not result in inconsistent rulings. Moreover, District contends that granting Student's motion to consolidate would deny District its due process rights, as it would interfere with its right to file a notice of insufficiency, which is not currently due until October 3, 2009. Finally, District contends that consolidation would deny District its right to a speedy hearing, as a consolidation would require a continuance, as Student raises numerous issues not raised in the District's case. District is correct.

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.

As set forth above, while the above-titled cases may have some overlapping facts, the Student's allegations go well beyond that of the District. The District, as well as Student, is entitled to due process. While Student has not requested a continuance in his current papers, seven continuances have delayed District's case and the time has come to move forward to hearing. Consolidation would necessarily result in another continuance of the due process hearing which has been pending since February 9, 2009. Consolidation will not further the

interests of judicial economy and would serve to infringe on District's right pursue it case and to properly respond to Student's recent filing. As such, Student's motion for consolidation is denied.

IT IS SO ORDERED.

Dated: September 21, 2009

/s/

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CARLA L. GARRETT  
Administrative Law Judge  
Office of Administrative Hearings