

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

OAH CASE NO. 2010070257

v.

SALINAS CITY SCHOOL DISTRICT AND
MONTEREY COUNTY OFFICE OF
EDUCATION,

MONTEREY COUNTY OFFICE OF
EDUCATION ,

OAH CASE NO. 2010060753

v.

PARENT ON BEHALF OF STUDENT.

ORDER GRANTING MOTION TO
CONSOLIDATE AND DENYING
STUDENT'S MOTION TO CONTINUE

On June 18, 2010, Lenore Silverman, attorney for Monterey County Office of Education (County), filed a Request for Due Process Hearing against Student. This matter was designated as Office of Administrative Hearings (OAH) Case Number 2010060753 (County's Case). On July 6, 2010, Tamara L. Loughrey, attorney for Student, filed a Request for Due Process Hearing against the Salinas City School District (Salinas) and County. This matter was designated as OAH Case Number 2010070257 (Student's Case).

On July 6, 2010, Student filed a Motion to Consolidate Student's Case with County's Case and to continue the prehearing conference and due process hearing dates set in Case Number 2010060753, County's Case. OAH did not receive a response to the motion to consolidate and motion to continue from Salinas or County.

APPLICABLE LAW

Although no statute or regulation specifically provides a standard to be applied in deciding a motion to consolidate special education cases, OAH will generally consolidate matters that involve a common question of law or fact and the same parties, and when consolidation of the matters furthers the interests of judicial economy 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].)

A due process hearing must be conducted and a decision rendered within 45 days of receipt of 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, 3.1332 .) Generally, continuances of matters are disfavored. (Cal. Rules of Court, 3.1332(c).)

DISCUSSION

County's case alleges a single issue as to whether its offer of placement and services contained in the April 27, 2010 individualized education program (IEP) offers Student a free appropriate public education (FAPE). Student's case alleges multiple issues including whether the April 27, 2010 IEP offers Student a FAPE, failure to conduct appropriate assessments of Student since 2008, denial of parental participation in the development of Student's IEPs and failure to provide appropriate services in the 2009-2010 school year, including the extended school year for 2010.

While Student's case goes beyond the issues raised in County's case, it includes the dispute over the April 27, 2010 IEP, which is the only issue in County's case. Consolidation will further the interests of judicial economy, as the issues overlap and the parties' witnesses and evidence will be the same. Additionally, Salinas and County do not oppose the motion. Accordingly, Student's motion to consolidate is granted. Student's Case, OAH Case Number 2010070257, shall be the lead case for purposes of the 45-day timeline for issuance of the decision in the consolidated cases.

Student moves for a continuance of the currently set prehearing conference and due process hearing dates in County's Case, which are July 12, 2010 and July 14, 2010, respectively. Because the matters are consolidated and Student's Case is the lead case, all dates in County's Case are vacated. Accordingly, Student's motion to continue is denied as moot.

ORDER

1. Student's Motion to Consolidate is granted.
2. All dates previously set in OAH Case Number 2010060753 (County's Case) are vacated.

3. 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 Number 2010070257 (Student's Case). The prehearing conference and due process hearing dates in Student's Case are August 25, 2010, and August 30, 2010, respectively.

Dated: July 12, 2010

/s/

BOB VARMA
Administrative Law Judge
Office of Administrative Hearings