

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

OAH CASE NO. 2010080478

v.

OAKLAND UNIFIED SCHOOL DISTRICT,

OAKLAND UNIFIED SCHOOL DISTRICT,

OAH CASE NO. 2011051152

v.

PARENT ON BEHALF OF STUDENT.

ORDER GRANTING MOTION TO
CONSOLIDATE AND GRANTING
MOTION TO CONTINUE

On August 9, 2010, Student filed a request for a due process hearing (complaint) with the Office of Administrative Hearings (OAH) naming the Oakland Unified School District (District). This matter was given OAH case number 2010080478 (first case).

On May 31, 2011, the District filed a complaint naming Student. This matter was given OAH case number 2011051152 (second case). The District also filed a motion to consolidate the first case with the second case and a separate motion to continue the due process hearing date set in the first case which was to begin on June 13, 2011, and continue through June 16, 2011.

On June 2, 2011, Student filed an objection to consolidation on the ground that it would extend the length of time of the due process hearing. Student also filed an objection to the motion to continue.

APPLICABLE LAW

Consolidation

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 and/or fact; 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].)

Continuance

A due process hearing must be held, and a decision rendered, within 45 days of receipt of the complaint, unless a continuance is granted for good cause. (Ed. Code, §§ 56502, subd. (f) & 56505, subd. (f)(1)(C)(3).)

DISCUSSION

Consolidation

Here, the first case and second case involve a common question of law or fact, specifically, whether the District has provided Student with a free appropriate public education (FAPE) since August 2008. The District's complaint also asks that OAH find that the District is entitled to conduct a triennial assessment of Student without parental consent.¹ Although establishing the facts in support of this issue may extend the length of the hearing, it should not extend the hearing by a considerable length. In addition, consolidation furthers the interests of judicial economy by saving time and preventing inconsistent rulings. Accordingly, consolidation is granted.

Continuance

The District has asked that the due process hearing currently scheduled to begin on June 13, 2011, in the first case be continued because the attorney for the District is already scheduled to commence another due process hearing on June 14, 2011. Further, the attorney requests a continuance because she was only retained to represent the District on May 26, 2011, and she contends that two-and-a-half weeks is an inadequate amount of time to prepare for hearing.

OAH recognizes that the attorney for the District is currently scheduled to be in another due process hearing June 14 through 16, 2011, and needs additional time to prepare for a due process hearing in this consolidated matter. Accordingly, good cause exists to continue this matter. However, it is concerning that the first case has been pending since August 9, 2010. Therefore, the matter will only be continued for a short period of time to the dates currently set for mediation and the prehearing conference (PHC) the second complaint. The commencement date for the due process hearing in the second complaint will be

¹ The District's complaint asks that OAH find that it has provided Student with a FAPE since September 29, 2009. The complaint also contains a third issue that is being stricken sua sponte in a separate order.

advanced one day to comply with the parties' previous estimate that the hearing will take four days.

ORDER

1. The District's motion to consolidate is granted.
2. All dates previously set in OAH Case Number 2010080478, the first case, are vacated.
3. The District's motion to continue is granted. The mediation in the above-captioned case shall be held on June 15, 2011, at 9:30 a.m. The PHC in the consolidated cases shall be held on June 22, 2011 at 10:00 a.m. and the due process hearing in the consolidated cases shall be held on June 27, 2011, through June 30, 2011, commencing at 1:30 p.m. on the first day.
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 Number 2010080478, the first case.

Dated: June 3, 2011

/s/

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings