

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

TUSTIN UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2010090249
(Consolidated with Case No. 2011010802)

ORDER GRANTING MOTION TO
CONSOLIDATE

On September 3, 2010, Parents, on behalf of Student, through counsel, filed with the Office of Administrative Hearings (OAH) a Due Process Complaint (Student Complaint) than named the Tustin Unified School District (District). OAH assigned Case No. 2010090249 to the Student Complaint.

Currently pending in the Student Complaint is a prehearing conference set for January 31, 2011, and a due process hearing set for February 7, 8, 9 and 10, 2011.

On January 25, 2011, counsel for the District filed with OAH a Request for Due Process Hearing (District Complaint) that named Parents and Student. OAH has assigned Case No. 2011010802 to the District Complaint.

Currently pending in the District Complaint is a mediation set for February 9, 2011, a prehearing conference set for February 16, 2011, and a due process hearing set for February 16, 2011.

Concurrently with the District Complaint, counsel for the District filed with OAH a Motion to Consolidate which seeks to join Case No. 2010090249 and Case No. 2011010802.

On January 28, 2011, counsel for Student filed with OAH an opposition to the Motion to Consolidate, contending that the Student Complaint is considerably broader in scope than the District Complaint, and that Student is entitled to a speedy resolution of her issues.

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].)

Here, the Student Complaint and the District Complaint share common questions of law and fact. In particular, both pleadings raise issues regarding the appropriateness of Student's special education program for the current school year. Hearing the cases together will save much time and expense for the parties, for witnesses and for OAH. Accordingly, consolidation is granted.

ORDER

1. The Motion to Consolidate OAH Case No. 2010090249 with OAH Case No. 2011010802 is granted.
2. All dates previously set in OAH Case No. 2010090249 (the Student Complaint) are vacated. The mediation and hearing dates currently set for OAH Case No. 2011010802 (the District Complaint) shall remain on calendar.
3. The 45-day timeline for the issuance of the decision in the consolidated cases shall be based upon the filing date of the Request for Due Process Hearing in Case No. 2011010802 (the District Complaint).
4. A telephonic trial setting conference is hereby set for Monday, January 31, 2011, at 12:15 p.m. OAH shall initiate the conference call. Counsel for the parties shall be prepared to agree upon seven to 10 days, which the undersigned ALJ estimates will be the time required for the due process hearing in these consolidated matters.

Dated: January 28, 2011

/s/

TIMOTHY L. NEWLOVE
Presiding Administrative Law Judge
Office of Administrative Hearings