

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. NEWPORT-MESA UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2010110571
NEWPORT-MESA UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2010110566 ORDER GRANTING MOTION TO CONSOLIDATE AND GRANTING MOTION TO CONTINUE

On November 12, 2010, District filed a Request for Due Process Hearing in OAH case number 2010110566 (First Case), naming Student as the respondent.

On November 15, 2010, Student filed a Request for Due Process Hearing in OAH case number 2010110571 (Second Case), naming District as the Respondent.

On November 30, 2010, District filed a Motion to Consolidate the First Case with the Second Case and to continue the due process hearing dates set in both cases. On December 3, 2010, Student filed an opposition to the motion. On December 3, 2010, District filed a reply. As discussed below, the Motion is granted.

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 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].)

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

The First Case, filed by District, seeks a ruling that its offer of placement and services made at the August 27, 2010, IEP meeting, including the use of a safety harness during transportation while Student rides the District schoolbus, constituted a free appropriate public education (FAPE) in the least restrictive environment (LRE). The Second Case, filed by Student, alleges that ever since Student's entry into the District in September 2009, District has denied Student a FAPE by offering placement in public school, which is not appropriate due to Student's unique educational needs and medical conditions. The Second Case seeks a resolution that Student should be placed in a nonpublic school. The Second Case also alleges that District failed to offer placement and services in the LRE by offering transportation only if Student agrees to wear a safety harness.

Here, the First Case and Second Case involve common questions of law or fact. In addition, consolidation furthers the interests of judicial economy because the witnesses and evidence concerning District's and Student's issues will overlap. Accordingly, consolidation is granted.

District's motion to continue the hearing demonstrates good cause for a continuance, because the issues will require more days for hearing than the one day currently set for each case.

ORDER

1. District's Motion to Consolidate is granted.
2. All dates previously set in OAH Case Number 2010110566 (First Case) are vacated.
3. All timelines shall be governed by OAH Case Number 2010110571 (Second Case). District's motion to continue is granted so the previously set hearing dates are continued and the following dates are set for this consolidated case: The Prehearing Conference shall be held on January 11, 2011 at 1:30 p.m. and the Due Process Hearing shall be held on January 24-27, 2011, beginning at 9:30 a.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 2010110571 (Second Case).

Dated: December 6, 2010

/s/

JUNE R. LEHRMAN
Administrative Law Judge
Office of Administrative Hearings