

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

EDUCATIONAL RIGHTS HOLDERS ON
BEHALF OF STUDENT,

v.

JEFFERSON UNION HIGH SCHOOL
DISTRICT,

OAH CASE NO. 2010110659

JEFFERSON UNION HIGH SCHOOL
DISTRICT,

v.

EDUCATIONAL RIGHTS HOLDERS ON
BEHALF OF STUDENT.

OAH CASE NO. 2010110380

ORDER GRANTING MOTION TO
CONSOLIDATE, VACATING DUE
PROCESS HEARING DATES, AND
DENYING MOTION TO CONTINUE

On November 8, 2010, Eugene Whitlock, attorney for Jefferson Union High School District (District), filed a Request for Due Process Hearing (District's complaint), naming Student. The Office of Administrative Hearings (OAH) designated the matter as OAH case number 2010110380. On November 9, 2010, OAH issued a Scheduling Order and Notice of Due Process Hearing and Mediation. The mediation was set for November 23, 2010, prehearing conference was set for December 1, 2010, and due process hearing was set for December 7, 2010. On November 19, 2010, OAH issued an order granting District's request for additional hearing days and the due process hearing was set for December 7-9, 2010.

On November 18, 2010, Christian Knox and Karie Lew, attorneys for Student, filed a Request for Due Process Hearing (Student's complaint), naming District. OAH designated the matter as OAH case number 2010110659. On November 19, 2010, OAH issued a Scheduling Order and Notice of Due Process Hearing and Mediation. The mediation was set for December 16, 2010, prehearing conference was set for January 5, 2011, and due process hearing was set for January 12, 2011.

On November 18, 2010, Student filed a Motion to Consolidate Student's complaint with District's complaint. Student further requested that the dates in District's case be vacated and the consolidated matters proceed according to the dates set in Student's case. OAH did not receive a response to the Motion to Consolidate from District. However, on

November 19, 2010, District filed an opposition to vacating dates in District's case and requested that the consolidated matters proceed according to the dates in District's case.

On November 23, 2010, Student filed a separate Motion to Continue the due process hearing dates in District's case. District did not file an opposition to Student's motion, but had previously, on November 19, 2010, opposed any continuance of the dates in District's case.

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

District's complaint raises the sole issue of whether District has offered Student a free appropriate public education (FAPE) based on the services and placement offered at Student's individualized education program (IEP) team meetings of September 15, 2010, and November 2, 2010. District's complaint is based upon Student's Educational Rights Holder's alleged refusal to consent to implement the services and placement offered at this IEP.

Student's complaint seeks declaratory, compensatory, and other relief based upon an alleged failure to adequately assess Student and a denial of FAPE by District. The time period at issue in Student's complaint is from the start of the 2008-2009 school year, through the 2010-2011 school year.

These cases generally involve common questions of law and fact because both cases raise claims regarding Student's services and placement. In both cases, the parties will have to present facts pertaining to Student's need for services and placement during the 2010-2011 school year, including the September 15, 2010, and November 2, 2010, IEP team meetings. Consolidation furthers the interests of judicial economy because both cases involve claims regarding what constitutes a FAPE for Student and involve the same time period, and therefore, will likely involve the same witnesses and evidence. Consolidation will obviate

potentially inconsistent rulings. Finally, District has not opposed Student's motion. Accordingly, consolidation is granted.

Student's case shall be deemed as the lead case for purposes of the 45-day timeline to issue a decision. Therefore, all dates in District's case are vacated. Accordingly, Student's Motion to Continue the dates in District's case is moot and is denied.

ORDER

1. Student's Motion to Consolidate is granted and these cases are consolidated.
2. The December 1, 2010 prehearing conference and December 7 -9, 2010 due process hearing dates in District's case (OAH Case Number 2010110380) are vacated.
3. Student's Motion to Continue the dates in District's case is moot and is denied.
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 Student's case (OAH Case Number 2010110659).
5. The currently set mediation date of December 16, 2010¹, prehearing conference date of January 5, 2011, at 10:00 a.m., and the hearing date of January 12, 2011, in Student's case shall remain on calendar.²

Dated: November 30, 2010

/s/

TROY K. TAIRA
Administrative Law Judge
Office of Administrative Hearings

¹ On November 19, 2010, District filed a request to continue the mediation in Student's case. That motion will be addressed separately.

² With respect to the currently calendared date in Student's case, OAH assumes a case will continue day to day until completed and if the parties require specific hearing dates different from the currently scheduled one, they may file a joint request or appropriate motions.