

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

NEWPORT-MESA UNIFIED SCHOOL  
DISTRICT.

OAH CASE NOS. 2010120902,  
2010110309 and 2010040608

ORDER GRANTING MOTION TO  
CONSOLIDATE AND FURTHER  
GRANTING MOTION TO CONTINUE

On April 6, 2010, counsel for Student's mother, on behalf of Student, filed with the Office of Administrative Hearings (OAH) a Request for Due Process Hearing (Mother's Complaint) which named the Newport-Mesa Unified School District (District). OAH assigned this matter Case No. 2010040608.

On November 3, 2010, counsel for the District filed with OAH a Request for Due Process Hearing (District Complaint) that named Student. OAH assigned this matter Case No. 2010110309.

On November 12, 2010, OAH issued an order that consolidated Case Nos. 2010040608 and 2010110309, and assigned the following hearing dates: a prehearing conference for December 29, 2010, and a due process hearing for January 4, 5, 6, 7, 10, 11, 12, and 13, 2011.

On December 27, 2010, counsel for Student's father, on behalf of Student, filed with OAH a Request for Due Process Hearing (Father's Complaint) which named the District. OAH has assigned this matter Case No. 2010120902. On the same day, OAH issued a Scheduling Order which set the following hearing dates in Father's Complaint: a mediation for February 2, 2011, a prehearing conference for February 14, 2011, and a due process hearing for February 22, 2011.

On December 27, 2010, the parties submitted to OAH a Stipulation to Consolidate and to Reschedule Due Process Hearing. The Stipulation seeks approval for consolidation of Mother's Complaint, Father's Complaint and the District Complaint, and to schedule hearing dates in the newly consolidated matters for February 28 to March 3, 2011.

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, Mother's Complaint, Father's Complaint and the District Complaint involve common questions of law or fact, and consolidation will further the interests of judicial economy based upon common witnesses and documentary evidence among the three cases. Accordingly, consolidation is granted.

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).) Here, the stipulated continuance requested by the parties is reasonable, and is granted.

#### ORDER

1. The Stipulation to Consolidate and the Reschedule Due Process Hearing is granted. OAH Case Nos. 2010120902, 2010110309 and 2010040608 are hereby consolidated.
2. All dates previously set in OAH Case Nos 2010120902 (Father's Complaint), 2010110309 (District's Complaint), 2010040608 (Mother's Complaint) are vacated.
3. The prehearing conference in the consolidated cases is hereby set for Wednesday, February 23, 2011, at 10:00 a.m. OAH shall initiate the conference call. The due process hearing in the consolidated cases is hereby set for February 28, 2011 and March 1, 2 and 3, 2011. If the parties wish to mediate the consolidated cases, the parties shall notify OAH of a mutually convenient date for such mediation.
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 No. 2010120902 (Father's Complaint).

Dated: December 28, 2010

/s/

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