

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

NEWPORT-MESA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011010389

In the Matter of:

NEWPORT-MESA UNIFIED SCHOOL
DISTRICT,

v.

PARENT(S) ON BEHALF OF STUDENT.

OAH CASE NO. 2011050001

ORDER GRANTING MOTION TO
CONSOLIDATE AND DENYING
MOTION TO CONTINUE

On January 13, 2011, Student filed a Request for Due Process Hearing (complaint) in OAH case number 2011010389 (First Case or Student's Case), naming District as the respondent. Student's complaint alleged, in pertinent part, that District denied Student a free appropriate public education (FAPE) in Individualized Educational Programs (IEPs) dated March 15, April 22, April 27 and June 21, 2010. The hearing date in Student's Case was originally scheduled for March 18, 2011. It has been continued twice and is currently scheduled for May 16, 17, 18 and 19, 2011.

On April 28, 2011, after the Prehearing Conference in the First Case, District filed a Request for Due Process Process Hearing (District's complaint) in OAH case number 2011050001 (Second Case or District's Case), naming Student as the respondent, seeking a determination that the March 15, April 22, April 27 and June 21, 2010 IEPs had offered Student a FAPE. District's complaint also seeks an order mandating that Parents make Student available for assessments. Simultaneously with the filing of District's complaint in the Second Case, District filed a Motion to Consolidate the First Case with the Second Case and to continue the due process hearing dates set in Student's Case.

District argued, in pertinent part, that the cases involve common questions of law and fact, that additional hearing days will be required to conclude both cases together, and that it could have filed its complaint three days earlier, on April 25, 2011, but Student's counsel

requested District to “hold off” on the filing of District’s complaint while the parties engaged in settlement discussions.

On May 2, 2011, Student filed an objection to consolidation on the ground that Student would be prejudiced by delay.

APPLICABLE LAW and DISCUSSION

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].)

Here, the First Case and Second Case involve common questions of law or fact, specifically, whether the March 15, April 22, April 27 and June 21, 2010 IEPs denied or offered Student a FAPE. In addition, consolidation furthers the interests of judicial economy because the cases will involve the same witnesses and evidence. Accordingly, consolidation is granted.

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).)

District asks to continue the consolidated matters, because the consolidated matters cannot be fully heard in the four days presently scheduled by OAH. Student opposes any request to continue the hearing dates. District’s motion to continue the hearing fails to demonstrate good cause for a continuance. District’s request for additional hearing dates can be accommodated by adding additional hearing days to the previously scheduled hearing days.

District’s argument that Student asked it to hold off filing for three days from April 25, 2011 until April 28, 2011 does not warrant a different conclusion, as it does not constitute good cause. A continuance would have caused unjustified delay in Student’s case, even had District’s complaint in fact been filed three days earlier.

ORDER

1. District's Motion to Consolidate is granted.
2. All dates previously set in District's case, OAH 2011050001, are vacated.
3. District's Motion to Continue is denied. The Due Process Hearing in the consolidated cases shall be held as currently scheduled in OAH Case Number 2011010389 (First Case), on May 16, 17, 18 and 19, 2011, beginning at 1:00 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 2011010389 (First Case).

Dated: May 9, 2011

/s/

JUNE R LEHRMAN
Administrative Law Judge
Office of Administrative Hearings