

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. BELMONT-REDWOOD SHORES ELEMENTARY SCHOOL DISTRICT,	OAH CASE NO. 2011060225
BELMONT-REDWOOD SHORES ELEMENTARY SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2011080166 ORDER GRANTING MOTION TO CONSOLIDATE AND GRANTING MOTION TO CONTINUE

On June 3, 2011, Student filed a Request for Due Process Hearing (complaint) in OAH case number 2011060225 (First Case), naming District as respondent. On August 5, 2011, District filed a complaint in OAH case number 2011080166 (Second Case), naming Parent on behalf of Student. On August 5, 2011, District also filed a motion to consolidate the First Case with the Second Case, as well as a request to continue the due process hearing dates set in both cases to either September 12, 2011 or September 19, 2011. On August 8, 2011, Student filed a notice of non-opposition to District's motion to consolidate, without specifically addressing District's request for continuance. For the reasons discussed below, District's motion to consolidate, as well as its motion for continuance, are granted.

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 a common question of law or fact, specifically, whether District offered Student a FAPE at Student's March 17, March 29, and May 27, 2011 IEPs. In addition, consolidation will further the interests of judicial economy

because both complaints involve a common question law and/or fact, as well as the same parties. Accordingly, consolidation is granted.

Request for 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).)

Here, District's motion to continue the due process hearing to either September 12, 2011 or September 19, 2011 demonstrates good cause based on the need for additional hearing days in District's case; the desire of the parties to discuss settlement in both cases; and the short time frame requested for continuance. Additionally, Student's notice of non-opposition did not object to District's request for continuance or to either of District's proposed dates for hearing. Accordingly, District's request for continuance is granted.

ORDER

1. District's Motion to Consolidate is granted.
2. All dates previously set in OAH Case Number 2011060225 (First Case) are vacated. All dates previously set in OAH Case number 2011080166 (Second Case) are vacated.
3. District's Motion to Continue is granted for good cause. The Mediation in the above-captioned case shall be held on August 24, 2011 beginning at 9:30 a.m.¹; the telephonic Prehearing Conference in the consolidated cases shall be held on September 12, 2011, at 10:00 a.m., and the Due Process Hearing in the consolidated cases shall be held on September 19, 2011 beginning at 1:30 p.m., and September 20 through September 22, 2011 beginning at 9:00 a.m., unless otherwise ordered.

¹ Although District did not identify a new date for mediation, this date was assigned based on the unavailability of District's counsel on the originally scheduled mediation date in the First Case, and on Student's silence in its non-opposition as to dates for mediation. The parties may contact OAH and request a mutually agreeable alternate date for mediation, if necessary.

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 Second Case, OAH Case Number 2011080166.

Dated: August 9, 2011

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings