

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:	
PARENT ON BEHALF OF STUDENT,	OAH CASE NO. 2011060368
v.	
UPLAND UNIFIED SCHOOL DISTRICT,	
<hr/>	
UPLAND UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2011070549
v.	
PARENT ON BEHALF OF STUDENT.	ORDER GRANTING MOTION TO CONSOLIDATE AND DENYING MOTION TO CONTINUE, WITHOUT PREJUDICE

On June 8, 2011, Student filed a Request for Due Process Hearing in OAH case number 2011060368 (First Case), naming District as the respondent, alleging that District failed in its Child Find obligations to identify and address Student’s need for special education and related services, and that District denied Student a free appropriate public education (FAPE) during the 2010-2011 school year.

On July 11, 2011, District filed a Request for Due Process Hearing in OAH case number 201070549 (Second Case), naming Student as the respondent, seeking an order permitting District to assess Student without parental consent.

On July 11, 2011, District filed a Motion to Consolidate the First Case with the Second Case and to continue the due process hearing date in both cases to “mutually agreeable,” as-yet undetermined dates. On July 12, 2011, Student served on District an Opposition to the Motion to Consolidate which was later filed with OAH on July 18, 2011.¹

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

¹ Student’s Motion to Dismiss District’s complaint in the Second Case will be addressed by a separate Order.

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, the parties' respective allegations concerning Student's eligibility for special education, and District's Child Find obligations to identify and address Student's need for special education and related services. In addition, consolidation furthers the interests of judicial economy because the parties and evidence in both cases will overlap. 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).)

Here, District has requested a continuance of the hearing dates, and OAH is inclined to grant the continuance. However, the parties did not meet and confer regarding new hearing dates as is requested by OAH. Forms are available on the OAH website that explain the procedure. Trial setting conferences are set only in unusual cases. The parties may re-submit the request to continue after they have agreed upon hearing dates.

ORDER

1. District's Motion to Consolidate is granted.
2. All dates previously set in the First Case, OAH Case Number 2011060368 are vacated.
3. 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 the Second Case, OAH Case Number 2011070549.
4. District's Motion to Continue is denied without prejudice. All dates previously set for hearing in this matter in the Second Case, OAH Case Number 2011070549 shall remain as scheduled.

Dated: July 18, 2011

/s/

JUNE R. LEHRMAN
Administrative Law Judge
Office of Administrative Hearings

