

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Consolidated Matters of:

GUARDIAN ON BEHALF OF STUDENT,

OAH CASE NO. 2011060840

v.

GARDEN GROVE UNIFIED SCHOOL  
DISTRICT,

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GARDEN GROVE UNIFIED SCHOOL  
DISTRICT,

OAH CASE NO. 2011100955

v.

GUARDIAN ON BEHALF OF STUDENT.

ORDER GRANTING MOTION TO  
CONSOLIDATE

BACKGROUND

On June 16, 2011, Guardian on behalf of Student (collectively, Student), filed a Request for Due Process Hearing in OAH case number 2011060840 (First Case), naming the Garden Grove Unified School District (District).

On October 25, 2011, the District filed Request for Due Process Hearing in OAH case number 2011100955 (Second Case), naming Student. The District concurrently filed a motion to consolidate its case with Student's case in Case Number 2011060840.

Student filed a non-opposition to the District's motion to consolidate on October 28, 2011. In his non-opposition Student also indicates that his guardian is unavailable for the second week of his hearing, presently set for November 14-17 and 21-23, 2011. Student indicates that his counsel has a possible conflict for the same time period as well. However, Student fails in his non-opposition to formally move for a continuance in the consolidated matter, or to offer proposed alternative dates for the consolidated hearing.

DISCUSSION

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 both involve offers made by the District to Student for individualized education programs. In the First Case, Student alleges, inter alia, that the 2009 offer by the District did not constitute a legally adequate free appropriate public education. In the Second Case, the District alleges that its 2011 offer to Student was legally adequate. The District points out in its motion that the educational plans it offered in each school year at issue were based upon a triennial assessment conducted by the District in 2009. The issues and witnesses are therefore similar. Consolidation therefore furthers the interests of judicial economy because these witnesses would otherwise have to testify at two separate proceedings. Additionally, Student has not opposed the District's motion to consolidate. Accordingly, consolidation is granted.

However, Student's apparent request to continue the consolidated matter is inadequate. Student does not state that he has conferred with the District specifically regarding the continuance, has not formally moved for a continuance, and, significantly, has not proposed new dates. Therefore, Student's request to continue the consolidated matter is denied without prejudice.

#### ORDER

1. The District's motion to consolidate is granted.
2. All dates previously set in OAH Case Number 2011100955 [Second Case] are vacated, with the exception of the mediation set in the Second Case for November 10, 2011. Unless the parties inform OAH to the contrary, mediation for both cases will proceed on that date.
3. The consolidated matter shall proceed to prehearing conference and due process hearing as scheduled presently for Student's case in 2011060840 [First Case].
4. If one or both parties wish to move to continue the case, the party(s) must file a formal motion to continue, indicating the dates to which the party(s) wishes OAH to continue both the prehearing conference and the due process hearing.

5. 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 2011060840 [First Case].

Dated: October 31, 2011

/s/

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DARRELL LEPKOWSKY  
Administrative Law Judge  
Office of Administrative Hearings