

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENTS ON BEHALF OF STUDENT,

v.

FULLERTON SCHOOL DISTRICT.

OAH CASE NO. 2011061318

FULLERTON SCHOOL DISTRICT

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NO. 2011061012

ORDER GRANTING MOTION TO
CONSOLIDATE AND GRANTING
MOTION TO CONTINUE

On June 22, 2011, the Fullerton School District (District), filed a Request for Due Process Hearing in OAH case number 2011061012 (First Case), naming Student.

On June 28, 2011, Student filed a Request for Due Process Hearing in OAH case number 2011061318 (Second Case), naming the District.

On July 12, 2011, the parties filed a joint motion to consolidate the First Case with the Second Case and to continue the due process hearing dates respectively set in both cases.

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. Both cases address the circumstances surrounding the District's most recent request to assess

Student and Student's request for independent educational evaluations. Since the issues, and the parties' apparent affirmative defenses to the opposing party's due process request, are so closely intertwined, consolidation of the cases furthers the interests of judicial economy. Accordingly, the motion for consolidation is granted.

CONTINUANCE REQUEST

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).)

The parties have jointly requested that the consolidated hearing be continued. It is the first request for continuance by either party. Good cause for the request is therefore found, and the motion to continue the consolidated matter is granted. However, the parties have requested a mediation date of August 22, 2011, which is a Monday. OAH is not presently scheduling mediations for Mondays or Fridays. OAH will therefore reschedule the mediation for Tuesday, August 23, 2011. If that date is not mutually convenient to the parties, they should contact OAH as soon as possible with an alternate date which falls on a Tuesday, Wednesday, or Thursday.

ORDER

1. The parties' joint motion to consolidate is granted.
2. The parties' motion to continue the consolidated matter is granted.
3. All dates previously set in OAH Case Numbers 2011061012 and 2011061318 are vacated and new dates are set as follows:

Mediation: August 23, 2011, at 9:30 a.m.

Prehearing Conference: September 21, 2011, at 10 a.m.

Due Process Hearing: September 27-29, 2011, starting at 9:30 a.m. on the first day of hearing.

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 2011061318 [Second Case].

Dated: July 13, 2011

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings