

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Consolidated Matters of:

LUCIA MAR UNIFIED SCHOOL DISTRICT,

OAH CASE NO. 2011080340

v.

PARENT ON BEHALF OF STUDENT.

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LUCIA MAR UNIFIED SCHOOL DISTRICT,

OAH CASE NO. 2011050572

v.

PARENT ON BEHALF OF STUDENT.

ORDER GRANTING MOTION TO  
CONSOLIDATE, GRANTING MOTION  
TO CONTINUE, AND SETTING  
PREHEARING CONFERENCE AND  
DUE PROCESS HEARING

On May 13, 2011, the Lucia Mar Unified School District (District) filed a Request for Due Process Hearing in Office of Administrative Hearings (OAH) case number 2011050572 (First Case), naming Student. On August 9, 2011, District filed a Request for Due Process Hearing in OAH case number 2011080340 (Second Case), naming Student.

On August 9, 2011, Parent, on Behalf of Student, filed a request to continue the due process hearing date set in the First Case, requesting that the hearing date be set no earlier than October 24, 2011, on multiple grounds.

On August 10, 2011, District filed a Motion to Consolidate the First Case with the Second Case. Student informed OAH on August 12, 2011, that he does not oppose the request to consolidation.

On August 11, 2011, District filed an opposition to Student's motion to continue the First Case on the ground that Student failed to show good cause for continuance.

## 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 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, both cases involve a common question of law or fact because the issues in the First Case must be proven to proceed with the Second Case, specifically, the adequacy of the District's September 2010 behavior assessment, the issue in the First Case, and whether the District's July 28, 2011 individualized education program provides Student with a free appropriate public education, the issue in the Second Case. In addition, consolidation furthers the interests of judicial economy because the cases will involve the same witnesses and evidence. Accordingly, consolidation is granted. All dates in the First Case are vacated and this matter shall proceed with the Second Case being the primary case for purposes of the 45-day time line to issue a decision.

### *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).)

Student, prior to District's filing of the Second Case, asked to continue the First Case to a date not earlier than October 24, 2011, because the hearing was scheduled for the first day of school, because Parents have been unable to locate an assessor for Student and because Student's possible attorney is not available until after October 24, 2011. District opposes any request to continue the hearing date of either the First Case or the Consolidated Case. The Consolidated Case is set in accordance with the Second Case and is currently scheduled for hearing on September 7, 2011. Student's motion to continue the hearing demonstrates good cause for a continuance because the request is for a short continuance in light of the consolidation of the First Case with the Second Case and the Student's request relates to matters that are critical to their ability to defend Student. Accordingly, the dates in the Consolidated Case are set forth below.

## ORDER

1. District's Motion to Consolidate is granted.

2. All dates previously set in the First Case, OAH Case Number 2011050572, are vacated. The 45-day time line to issue a decision shall be based upon the Second Case, OAH Case Number 2011080340.
3. Student's Motion to Continue is granted. The prehearing conference in the consolidated cases shall be held on October 12, 2011 at 10:00 a.m. and the due process hearing in the consolidated cases shall be held on October 25, through October 27, 2011, with the hearing beginning at 9:30 a.m. on the first day.

Dated: August 12, 2011

/s/

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MICHAEL G. BARTH  
Administrative Law Judge  
Office of Administrative Hearings