

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENTS ON BEHALF OF STUDENT,

OAH CASE NO. 2012080512

v.

TEMECULA VALLEY UNIFIED SCHOOL
DISTRICT and THE KEEGAN ACADEMY.

PARENTS ON BEHALF OF STUDENT,

OAH CASE NO. 2012080514

v.

TEMECULA VALLEY UNIFIED SCHOOL
DISTRICT and THE KEEGAN ACADEMY.

ORDER GRANTING JOINT MOTION
TO CONSOLIDATE AND GRANTING
JOINT MOTION TO CONTINUE

PROCDURAL HISTORY

On August 17, 2012, Parents on behalf of Student (collectively referred to as Student A) filed a request for due process hearing (complaint) in Office of Administrative Hearings (OAH) case number 2012080512, (First Case), naming the Temecula Valley Unified School District (TVUSD) and the Keegan Academy (Keegan) as respondents (TVUSD and Keegan are collectively referred to herein as the District).

Also on August 17, 2012, Parents on behalf of Student (collectively referred to herein as Student B) filed a complaint in OAH case number 2012080514 (Second Case), naming the District.

Student A and Student B are twin brothers. Their respective complaints allege procedural and substantive due process violations against the District with regard to school years 2010-2011, 2011-2012, and 2012-2013. The complaints in the First Case and the Second Case are almost identical, with the exception of a few words.

The parties filed separate joint requests for continuance in both cases on September 26, 2012. In separate orders issued on September 27, 2012, OAH granted both motions for continuance.

The due process hearing in Student A's case began as scheduled on October 22, 2012. The hearing in Student B's case is scheduled to start on November 13, 2012. At the pre-hearing conference held on October 15, 2012, in Student B's case, the parties discussed the possibility of consolidating the two cases. However, the parties did not file a motion to do so prior to the start of the hearing in Student A's case on October 22.

On October 25, 2012, at the beginning of the third day of hearing in the First Case, the parties conferred about scheduling issues in both cases. After conferring, the parties made a joint oral motion to consolidate Student A's case with Student B's case. The parties requested a continuance of the proceedings so that the consolidated hearing would begin on November 13, 2012, the date already scheduled for the hearing in the Second Case.

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].)

There appears to be no precedent regarding the consolidation of cases involving different petitioning students, at least since the time the Office of Administrative Hearings resumed jurisdiction in July 2005 over due process hearings. Generally, consolidating the cases of two students, even those who are siblings, would be disfavored given the individual nature of the claims presented.

The parties here urge consolidation because the two cases present a unique situation. Both parties agree that the procedural allegations raised in each complaint are almost identical. Additionally, both parties agree that the substantive issues are nearly indistinguishable because Student A and Student B have almost identical disabilities and special education needs. The parties contend that the witnesses, evidence, and testimony in each case would be almost identical, and that it would be a waste of resources to have separate proceedings where the second case will effectively duplicate the first.

After due consideration, in light of the unique nature of the cases, the agreement of the parties that the cases raise almost identical procedural and substantive issues, and in the furtherance of judicial economy, the joint motion to consolidate is granted.

Additionally, good cause appearing, the parties' joint motion to continue the consolidated hearing is granted.

ORDER

1. The parties' joint motion to consolidate is granted. The consolidation is retrospective and thus encompasses the testimony of witnesses who have already testified in the First Case. That testimony is deemed part of the consolidated hearing.

2. The hearing dates previously set in the First Case (OAH case number 2012080512) are vacated.

3. The parties' motion for continuance is granted. The consolidated case will be heard on November 13-16, 2012, the dates now scheduled for the Second Case (OAH case number 2012080514). The hearing shall take place at the District's offices. **The hearing shall start at 9:30 a.m. on November 13, 2012, and at 9:00 on all other days**, unless otherwise ordered. The parties shall be prepared to propose two additional consecutive days of hearing in the event that the consolidated hearing is not finished by November 16, 2012.

4. Students shall recall witness Gina Bates to testify regarding issues in Student B's case.

5. The 45-day timeline for issuance of the decision in the consolidated cases shall be based on the date of the filing of both complaints since the complaints were filed on the same day and the parties' motion for continuance in each case was granted on the same day.

6. After consultation with the parties, the undersigned Administrative Law Judge will determine whether she will issue a joint decision on the consolidated matter, or separate decisions addressing each student.

Dated: October 25, 2012

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings