

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. SOUTH WHITTIER ELEMENTARY SCHOOL DISTRICT,	OAH CASE NO. 2012090588
SOUTH WHITTIER ELEMENTARY SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2012100403 ORDER GRANTING PARTIES' JOINT MOTION TO CONSOLIDATE AND CONTINUE DATES

On September 20, 2012, Student filed a request for due process hearing in OAH case number 2012090588 (First Case), naming the South Whittier Elementary School District (District).

On October 8, 2012, District filed a request for due process hearing in OAH case number 2012100403 (Second Case), naming Parents on behalf of Student.

On October 17, 2012, the parties filed a joint motion to consolidate the First Case with the Second Case and to continue the due process hearing dates. The parties also request that January 7 and 8, 2013, be scheduled for the hearing. No prior continuances have been requested in either matter.

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 common questions of law and fact. Specifically, the First Case alleges that Student was denied a free appropriate public education (FAPE), due in part to insufficient assessments by District staff, and seeks independent educational evaluations (IEEs) in the areas of psychoeducational, speech and language (S&L), occupational therapy (OT) and physical therapy (PT), among other relief. The Second Case seeks an order that District's psychoeducational, S&L, OT and PT assessments were appropriate and complied with federal and state law, and that Student is not entitled to IEEs at public expense. Consolidation furthers the interests of judicial economy because the cases involve the same witnesses, evidence and questions of law, and will avoid the repetitive presentation of common evidence. 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).)

The parties' joint motion to continue the hearing demonstrates good cause for a continuance, based on their joint assertion that they have met and conferred and agree to a continuance to two consecutive hearing days, which will provide the parties with an expeditious fair hearing and opportunities to mediate on the consolidated issues.

ORDER

1. The parties' joint motion to consolidate is granted.
2. All dates previously set in OAH case number 2012090588 (First Case) and OAH case number 2012100403 (Second Case) are vacated.
3. The parties' joint motion to continue is granted. The mediation in the above-captioned cases shall be held on November 27, 2012 at 9:30 a.m., the prehearing conference in the consolidated cases shall be held on January 2, 2013, at 1:30 p.m., and the due process hearing in the consolidated cases shall be held on January 7 through 8, 2013, starting at 1:30 p.m. on the first day.
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 2012090588 (First Case).

Dated: October 18, 2012

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings