

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

v.

CASTRO VALLEY UNIFIED SCHOOL
DISTRICT,

OAH Case No. 2014020390

CASTRO VALLEY UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2014040266

ORDER GRANTING JOINT MOTION
TO CONSOLIDATE AND MOTION TO
CONTINUE

On February 6, 2014, Student filed with the Office of Administrative Hearings (OAH) a Request for Due Process Hearing in OAH case number 2014020390 (Student's Case), naming Castro Valley Unified School District (Castro Valley). That case was continued on March 6, 2014, at the joint request of the parties, and the hearing is set to commence on April 16, 2014.

On April 3, 2014, Castro Valley filed a Request for Due Process Hearing in OAH case number 2014040266 (Castro Valley's Case), naming Student. This matter is calendared for hearing beginning on April 29, 2014.

On April 3, 2014, the parties filed a joint Motion to Consolidate Student's with Castro Valley's case and to vacate the due process hearing date set in Case Number 2014020390 and set the matter at least 60 days out.

APPLICABLE LAW

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].)

Continuance

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Speedy resolution of the due process hearing is mandated by law and continuance of the hearing may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f)(3).) In ruling upon a motion for continuance, OAH is guided by the provisions found within the Administrative Procedure Act and the California Rules of Court that concern motions to continue. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, rule 3.1332.) Generally, continuances of matters are disfavored. (Cal. Rules of Court, rule 3.1332(c).)

DISCUSSION

Consolidation

Here, the Student's case and Castro Valley's case involve common question of law or fact, specifically, Student alleges Castro Valley denied him a free appropriate public education (FAPE) both procedurally and substantively during the 2012-2013 and 2013-2014 school years. Castro Valley asserts in its complaint that Student's individualized education program (IEP) team has convened multiple times commencing in the fall of 2013, and that it has offered Student a FAPE but Student's parents have not consented to the IEP. The parties jointly filed the request to consolidate. Consolidation furthers the interests of judicial economy because the cases involve overlapping time periods, similar issues, and witnesses. Accordingly, consolidation is granted.

When consolidation is granted, OAH designates one case as the primary case. In this case, OAH Case No. 2014020390, Student's case, will be designated as primary and the applicable timelines in that case will apply.

Continuance

In addition to the request to consolidate, the parties filed a joint request to vacate the hearing dates scheduled in Student's case and asked that the consolidated case be scheduled at least sixty days from the date of this order. That request will be construed as a motion to continue the dates currently set in both the Student's case and Castro Valley's case.

The parties assert in their joint motion that at least sixty additional days are needed because the parties are working to resolve the case and because Student's parents are seeking to retain available counsel experienced in special education matters to represent Student if the matter proceeds to hearing. The motion to continue the hearing will be granted and the dates previously scheduled in OAH Case Numbers 2014020390 and 2014040266 are vacated.

ORDER

1. The parties' joint Motion to Consolidate is granted.
2. All dates previously set in OAH Case Number 2014020390, Student's case, and OAH Case Number 2014040266, Castro Valley's case, are vacated.
3. The joint Motion to Continue is granted. The consolidated matter will now be scheduled for a telephonic pre-hearing conference on June 16, 2014, at 1:00 p.m. and the due process hearing in the consolidated cases shall begin on June 24, 2014, at 9:30 a.m., and continue day to day, Monday through Thursday, as needed and at the discretion of the Administrative Law Judge.¹
4. The 45-day timeline for issuing the decision in the consolidated cases shall be based on the date the complaint was filed in OAH Case Number 2014020390, Student's case.

DATE: April 7, 2014

/s/

JOY REDMON
Administrative Law Judge
Office of Administrative Hearings

¹ If the parties wish to participate in mediation in the consolidated matter, they may submit that request to OAH in writing.