

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENTS ON BEHALF OF STUDENT,

OAH Case No. 2014020448

v.

ALHAMBRA UNIFIED SCHOOL DISTRICT,

ALHAMBRA UNIFIED SCHOOL DISTRICT,

OAH Case No. 2013090186

v.

PARENTS ON BEHALF OF STUDENT.

ORDER GRANTING MOTION TO
CONSOLIDATE AND GRANTING
MOTION TO CONTINUE

On September 4, 2013, the Alhambra Unified School District (Alhambra) filed a Request for Due Process Hearing with the Office of Administrative Hearings (OAH) naming Student. That matter was designated as OAH case number 2013090186 (Alhambra's case). On September 19, 2013, and December 2, 2013, OAH granted the parties' joint requests to continue Alhambra's case.

On February 10, 2014, Student filed a Request for Due Process Hearing naming Alhambra. That matter was designated as OAH case number 2014020448 (Student's case).

On February 12, 2014, Student filed a motion to consolidate Student's case with Alhambra's case. The same day, Student also filed a motion to continue requesting that OAH vacate the dates previously set for a telephonic prehearing conference (PHC) and due process hearing in Alhambra's Case. The PHC in that case is currently scheduled for February 24, 2014, at 3:00 p.m. and the due process hearing is scheduled for March 3, 4, 5, 6, 10, 11, 12, and 13, 2014.

On February 14, 2014, OAH received Alhambra's notice of joinder in Petitioner's motion to consolidate and motion to continue.

Motion to Consolidate

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 interest 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, Alhambra's case and Student's case involve common questions of fact and overlapping legal issues. Alhambra's complaint puts at issue whether or not it offered Student a free appropriate public education (FAPE) and whether it can implement the offers made at individualized education program (IEP) meetings held on multiple days from April through August 2013. Student asserts that Alhambra failed to offer or provide Student a FAPE during the 2011-2012, 2012-2013, and 2013-2014 school years including extended school years. Given the overlapping issues regarding whether Alhambra has offered, provided, and can provide Student a FAPE, consolidation is appropriate.

In addition, consolidation furthers the interest of judicial economy because both cases involve the same parties and many of the same witnesses will be required to testify in each proceeding. Each matter will also involve introducing the same or similar documents including relevant IEP's. Accordingly, consolidation is granted.

When consolidating cases, OAH designates the statutory timelines applicable to the consolidated matters to be controlled by one of the cases. Here, the statutory timelines shall be controlled by Student's case, OAH case number 2014020448.

Motion to Continue.

As noted above, several dates are currently calendared in Alhambra's case for a telephonic prehearing conference (February 24, 2014) and for a due process hearing (March 3-6 and 10-13, 2014). Student filed a motion to continue those dates asserting, in part, that the dates conflict with Student's right to an informal resolution session, typically lasting 30 days from the date of the complaint. (Ed. Code § 56501.5 et seq.)

Student's case was filed on February 10, 2014. California Education Code section 56501.5(a) states in relevant part that, "[n]otwithstanding any other provision of law, prior to the opportunity for an impartial due process hearing under this chapter, the local educational agency shall convene a resolution meeting with the parents and the relevant member or members of the individualized education program team who have specific knowledge of the facts identified in the due process hearing request...." Consistent with this provision, OAH does not schedule hearing related events, such as mediations, prehearing conferences, and due process hearings, to commence until after the resolution session has expired.

The statutory timelines in the consolidated case shall be controlled by Student's case; that includes ensuring that the timeline for the resolution session to be held is observed. As a result of the consolidation of the cases, the dates in Alhambra's case are vacated and the

consolidated cases are continued to the dates currently calendared in Student's case. Therefore, the motion to continue is granted.¹

ORDER

1. Student's motion to consolidate is granted.
2. Student's motion to continue is granted.
3. All dates previously set in OAH Case Number 2013090186, Alhambra's case, are vacated.
4. The consolidated cases shall now be heard on the dates currently set for Student's case. Namely, mediation is scheduled for March 19, 2014, at 9:30 a.m... A telephonic PHC for the consolidated cases shall be held on March 28, 2014, at 3:00 p.m., and the due process hearing shall begin April 9, 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.
5. 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 2014020448, Student's case.

Dated: February 19, 2014

/s/

JOY REDMON
Administrative Law Judge
Office of Administrative Hearings

¹ It is noted that Alhambra also joined in the Motion to Continue asserting that if consolidation of the cases were granted, that additional school years would be put at issue. Accordingly, Alhambra asserted that it needed more time to prepare for the due process hearing.