

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENTS ON BEHALF OF STUDENT,

OAH Case No. 2014091018

v.

SAN DIEGUITO UNION HIGH SCHOOL
DISTRICT .

SAN DIEGUITO UNION HIGH SCHOOL
DISTRICT ,

OAH Case No. 2014090321

v.

PARENTS ON BEHALF OF STUDENT.

ORDER GRANTING MOTION TO
CONSOLIDATE AND GRANTING
REQUEST TO CONTINUE

On September 5, 2014, San Dieguito Union High School District filed a Request for Due Process Hearing in Office of Administrative Hearings Case No. 2014090321 (First Case), naming Parents on behalf of Student as respondent.

On September 25, 2014, Student filed a Request for Due Process Hearing in OAH Case No. 2014091018 (Second Case), naming San Dieguito as respondent.

On September 29, 2014, Student filed a Motion to Consolidate the First Case with the Second Case. Student also requests that the dates set in the first case apply to the consolidated cases.

San Dieguito did not file a response to the motion.

CONSOLIDATION AND CONTINUANCE

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 a common question of law or fact, specifically, the appropriateness of the March 13, 2014 individualized education program, as amended on May 13, 2014 and June 4, 2014. San Dieguito does not oppose the motion. In addition, consolidation furthers the interests of judicial economy. Accordingly, consolidation is granted. For purposes of the 45-day time line to issue a decision, the Second Case shall be the lead case in these consolidated matters.

OAH has set the due process hearing in the Second Case to commence on November 19, 2014. OAH has set the due process hearing in the First Case, by a continuance order, to commence on December 2, 2014. Student requests that the dates in the First Case apply to consolidated matters. Because the Second Case is designated as the lead case, this is in effect a request to continue.

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 for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances are disfavored. Good cause may include the unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances; substitution of an attorney when the substitution is required in the interests of justice; a party's excused inability to obtain essential testimony or other material evidence despite diligent efforts; or another significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. (See Cal. Rules of Court, rule 3.1332(c).) OAH considers all relevant facts and circumstances, including the proximity of the hearing date; previous continuances or delays; the length of continuance requested; the availability of other means to address the problem giving rise to the request; prejudice to a party or witness as a result of a continuance; the impact of granting a continuance on other pending hearings; whether trial counsel is engaged in another trial; whether the parties have stipulated to a continuance; whether the interests of justice are served by the continuance; and any other relevant fact or circumstance. (See Cal. Rules of Court, rule 3.1332(d).)

Student's request to continue is granted. All dates currently set in the Second Case will be vacated and the matters shall proceed according to the dates set in the First Case.

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 2014091018 [Second Case] are vacated. The PHC will be at 10:00 a.m. on November 21, 2014, and the Due Process Hearing on December 2-4, 2014.
4. OAH Case Number 2014091018 [Second Case] shall be designated the primary 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 the complaint in OAH Case Number 2014091018 [Second Case].

DATE: October 10, 2014

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings