

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENTS ON BEHALF OF STUDENT,

v.

DEL MAR UNION SCHOOL DISTRICT,

OAH Case No. 2015060088
[Primary Case]

DEL MAR UNION SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH Case No. 2015031157

ORDER GRANTING MOTION TO
CONSOLIDATE AND SETTING
PREHEARING CONFERENCE AND
DUE PROCESS HEARING

On March 23, 2015, Del Mar Union High School District filed a Request for Due Process Hearing in OAH case number 2015031157 (District's Case), naming Parents on behalf of Student.

On May 26, 2015, Parents on behalf of Student filed a Request for Due Process Hearing in OAH case number 2015060088 (Student's Case), naming District.

On May 26, 2015, Student filed a Motion to Consolidate Student's Case with District's Case.

On May 28, 2015, OAH granted the parties' joint request to continue the dates set in District's Case to the following agreed dates: Mediation on June 23, 2015 at 9:30 a.m.; Prehearing Conference on August 24, 2015, at 10:00 a.m., and the Due Process Hearing from August 31, 2015 through September 3, 2015, and continuing day to day Monday through Thursday at the discretion of the ALJ.

On May 28, 2015, District filed a non-opposition to the motion to consolidate and requested the consolidated matters proceed on the agreed dates.

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 Student's Case and District's Case involve common questions of law or fact. The issue in District's Case is whether the placement offered in Student's January 8, 2015, IEP constitutes a free appropriate public education in the least restrictive environment. One of the issues alleged in Student's Case is whether District failed to offer Student a FAPE in the January 2015 IEP. Although Student's Case contains more issues than District's Case, District has agreed to consolidation, and it is likely Student's other issues will involve much of the same evidence. Accordingly, consolidation furthers the interests of judicial economy. Student's motion to consolidate is granted. Student's Case is designated the primary case.

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) (2006); 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).)

District's request to continue the consolidated cases to the dates previously agreed to by the parties in District's Case is granted. While Student's motion to consolidate does not specifically request a continuance, the motion to consolidate was filed on May 26, 2015 and the parties filed a joint request to continue District's Case on May 28, 2015. Accordingly, the motion to consolidate is understood to include a continuance to the agreed dates. Therefore, District's motion to continue is granted, except as to the mediation date.¹

ORDER

1. Student's Motion to Consolidate is granted.
2. 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 Student's Case, OAH Case Number 2015060088.
3. District's motion for continuance is granted. All dates previously set in Student's case, OAH Case Number 2015060088, are vacated. The consolidated matter will

¹ The dates currently on calendar in District's Case include a date for mediation. The agreed date for mediation in District's Case is within the statutory time in which to hold a resolution session in Student's case. The parties may request a mediation of the consolidated cases.

proceed on the dates set in District's Case, OAH Case Number 2015031157,
except for the mediation date, which is vacated.

DATE: June 15, 2015

/s/

MARIAN H. TULLY
Administrative Law Judge
Office of Administrative Hearings