

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PAJARO VALLEY UNIFIED SCHOOL
DISTRICT PARENT ON BEHALF OF
STUDENT,

v.

PARENT ON BEHALF OF STUDENT,

PARENT ON BEHALF OF STUDENT ,

v.

PAJARO VALLEY UNIFIED SCHOOL
DISTRICT.

OAH Case No. 201506099

OAH Case No. 2015050333

ORDER GRANTING MOTION TO
CONSOLIDATE, GRANTING MOTION
TO CONTINUE, AND SETTING DATES
FOR PREHEARING CONFERENCE
AND DUE PROCESS HEARING

On April 27, 2015, Student filed a Request for Due Process Hearing in Office of Administrative Hearings case number 2015050333 (Student's Case), naming Pajaro Valley Unified School District. A hearing date was set for June 23, 2015. On June 9, 2015, OAH granted a first request for continuance and continuing the due process hearing to July 9, 13, and 14, 2015.

On June 19, 2015, District filed a request for due process naming Student in OAH Case number 201506099 (District's Case).

On June 22, 2015, District filed a request to consolidate District's case with Student's Case. Student did not file opposition to the motion to consolidate.

On June 25, 2015, District filed a request to continue Student's Case on the grounds counsel and essential witnesses are not available on the dates set.

On June 26, 2015, Student filed a request to advance the hearing timeline and opposition to District's request to continue the due process hearing. On June 30, 2015, District filed an opposition to Student's request to advance hearing 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, District's Case and Student's Case involve common questions of law or fact. District's Case concerns whether District's 2014 psychoeducational and educational assessments evaluations were appropriate such that Student is not entitled to an independent educational evaluation at public expense. While the issues alleged in Student's Case are broader than the issues contained in District's Case, one of the issues in Student's Case is whether District denied Student a free appropriate public education in its May 27, 2014 individualized education program offer by failing to identify all of Student's unique needs. Moreover, witness and exhibit lists filed in Student's Case include witnesses and exhibits relative to the 2014 assessments on both lists and the school psychologist is one of the essential witnesses that is unavailable on the dates set. Accordingly, consolidation furthers the interests of judicial economy and District's motion to consolidate 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).)

While District did not separately move to continue District's Case, District's motion to continue the hearing in Student's case is understood to include a continuance in the consolidated cases. For the reasons set forth above, good cause for a continuance of the consolidated cases based upon the unavailability of counsel and essential witnesses is granted as District has demonstrated by declaration their unavailability.

ORDER

1. District's Motion to Consolidate is granted.

2. All dates previously set in OAH Case Number 2015050333 (Student's Case) and 2015060991 (District's Case) are vacated as District's continuance request is granted.¹
3. 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 2015060991 (District's Case).
4. The Prehearing Conference in the consolidated cases shall be held on July 31, 2015, at 1:00 p.m. and the Due Process Hearing in the consolidated cases shall be held on August 11, 12 and 13, 2015, and continue as necessary at the discretion of the ALJ. The hearing shall begin at 9:30 a.m. on the first day and at 9:00 on all other days unless otherwise ordered.

DATE: June 30, 2015

/s/

MARIAN H. TULLY
Administrative Law Judge
Office of Administrative Hearings

¹ The parties may agree upon a date, and file a written request, for mediation of the consolidated cases.