

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT , v. LONG BEACH UNIFIED SCHOOL DISTRICT,	OAH Case No. 2015100205 (Primary Case)
LONG BEACH UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2015061176 ORDER GRANTING MOTION TO CONSOLIDATE AND CONTINUANCE OF DUE PROCESS HEARING DATE

On June 26, 2015, Long Beach Unified School District filed a Request for Due Process Hearing in OAH case number 2015061176 (District's Case), naming Student.

On September 28, 2015, Student filed a Request for Due Process Hearing in OAH case number 2015100205 (Student's Case), naming District.

On October 20, 2015, District filed a Motion to Consolidate District's Case with Student's Case, requesting Student's case be deemed the primary case.

On October 19, 2015, Student filed a Non-opposition to District's Motion to Consolidate, on condition that the mediation date remain as previously calendared for October 27, 2015, and prehearing conference and hearing dates go on the dates scheduled in Student's case,. On October 19, 2015, after OAH received Student's Non-opposition, District filed an amended Motion to Consolidate, which is treated as a reply brief. District requested that the dates set in District's case remain as the due process hearing date in Student's case is set for November 24, 2015, while District offices shall be closed for the Thanksgiving holiday break.

Student has not filed a response or objection to District's amended motion.

APPLICABLE LAW AND DISCUSSION

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 both cases involve a common question of law and fact, specifically, the validity and appropriateness of District's assessment. Assessment results are intertwined with Student's claim of denial of a free appropriate public education. Student does not oppose consolidation. In addition, consolidation furthers the interests of judicial economy because both cases involve the same witnesses and exhibits. Accordingly, consolidation is granted.

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).)

In this matter, the parties agreed to mediation, prehearing conference and hearing dates on August 27, 2015, which OAH granted. Both parties are requesting that the mediation occur on October 27, 2015, during the 30 day resolution session period in Student's case. Therefore, the parties request will be considered as a request to use mediation instead of the resolution process.¹ As both cases involve overlapping issues, and two months have elapsed since OAH granted the parties' continuance request, the consolidated matter shall proceed on the dates presently set for District's case.

ORDER

1. District's first Motion to Consolidate is granted. Student's case, OAH case number 2015100205 is deemed the primary case.

¹ A school district, or local education agency, must convene a meeting to discuss the issues raised in a due process complaint to attempt to resolve the dispute. (34 C.F.R. § 300.510(a)(1),(2).) This meeting is commonly known as a resolution session. A resolution session need not be held if the parent and school district agree in writing to waive it (*Id.* at § 300.510(a)(3)(i)) or if the parent and school district agree to use mediation instead of a resolution session (*Id.* at § 300.510(a)(3)(ii)). If the parties agree to waive the resolution session, the 45-day timeline for a due process hearing begins the day after the waiver. (*Id.* at § 300.510(c)(1).) However, the timeline does not automatically begin if the parties agree to use mediation instead of a resolution session. (*Id.* at § 300.510(c).)

2. The Due Process Hearing dates set in OAH Case Number 2015100205 (Student's Case) are vacated. District's motion to continue is granted and parties' request to proceed to mediation instead of the resolution process is granted.
3. The due process mediation, prehearing conference and hearing shall proceed as presently scheduled in District's case.
4. The 45-day timeline for issuance of the decision in the consolidated cases shall be based on the date of the filing of the Student's complaint in OAH Case Number 2015110205 (Student's Case). The date of this order is deemed the first continuance of the consolidated matters.

DATE: October 23 2015

/s/

JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings