

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT on behalf of STUDENT,

vs.

EAST SIDE UNION HIGH SCHOOL
DISTRICT, SANTA CLARA COUNTY
OFFICE OF EDUCATION

OAH CASE NO. 2009020570

EAST SIDE UNION HIGH SCHOOL
DISTRICT,

vs.

PARENT on behalf of STUDENT.

OAH CASE NO. 2009020463

ORDER GRANTING MOTION TO
CONSOLIDATE

On February 12, 2009, Benjamin Nieberg, attorney for East Side Union High School District (District), filed a Request for Mediation and Due Process Hearing naming Student (Student) as the respondent. This matter was designated as OAH Case No. 2009020463.

On February 19, 2009, OAH issued a Notice of Due Process Hearing, Notice of Mediation, and Notice of Telephonic Prehearing Conference in OAH Case No. 2009020463 as follows: mediation March 3, 2009 at 9:30 am; PHC March 9, 2009 at 1:30 pm and DPH March 13, 2009 at 9:00 am.

On February 19, 2009, Laurene Bresnick, attorney for Student filed a Request for Due Process Hearing naming East Side Union High School District and Santa Clara County of Education (SCCOE) as the respondents. This matter was designated as OAH Case No. 2009020570.

On February 20, 2009, OAH issued a Notice of Due Process Hearing, Notice of Mediation, and Notice of Telephonic Prehearing Conference in OAH Case No. 2009020570 as follows: mediation March 27, 2009 at 9:30 am; PHC April 6, 2009 at 1:30 pm and DPH April 15, 2009 at 9:00 am.

On February 24, 2009, Student filed a Motion to Consolidate OAH Case Number 2009020570 with OAH Case No. 2009020463. Student requested that the scheduling order in Case No. 2009020570 govern the consolidated case.

Student represents that the parties are in agreement with this consolidation however no separate responses have been received from District or SCCOE to this motion.

DISCUSSION

OAH will generally consolidate matters that involve a common question of law and/or fact and that involve the same parties, and when consolidation of the matters furthers the interests of judicial economy and will obviate potentially inconsistent rulings. While no statute or regulation specifically provides a standard to be applied in deciding a motion to consolidate special education cases, California statutes offer, by analogy, a standard appropriate to special education cases. Government Code section 11507.3, subdivision (a), provides that an administrative law judge “may” order pending administrative proceedings consolidated if they involve “a common question of law or fact . . .” California Code of Civil Procedure section 1048, subdivision (a), applies the same standard to the consolidation of civil cases.

The above-titled cases generally involves common questions of law or fact generally concerning disagreements in the fall of 2008 over placement and related transportation services, although this is not intended to be a complete recitation of the issues. No opposition has been received from District or SCCOE. Consolidation furthers the interests of judicial economy therefore consolidation is appropriate.

ORDERS

1. Student’s Motion to Consolidate is granted and the above-titled cases are consolidated.
2. All dates previously set for proceedings for OAH Case No. 2009020463 are vacated.
3. All dates previously set in OAH Case No. 2009020570 are confirmed. The Mediation shall be held on March 27, 2009 at 9:30 am, the Prehearing Conference shall be held on April 6, 2009 at 1:30 pm, 2009, and the Due Process Hearing shall be held on April 15, 2009 at 9:00am.
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 complaint in OAH Case No. 2009020570.

Dated: March 04, 2009

/s/

ANN F. MACMURRAY
Presiding Administrative Law Judge
Office of Administrative Hearings