

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT on behalf of STUDENT,

v.

MT. DIABLO UNIFIED SCHOOL DISTRICT, TWIN RIVERS UNIFIED SCHOOL DISTRICT, SACRAMENTO COUNTY MENTAL HEALTH, SACRAMENTO COUNTY OFFICE OF EDUCATION, CALIFORNIA DEPARTMENT OF MENTAL HEALTH, AND CALIFORNIA DEPARTMENT OF EDUCATION,

OAH CASE NO. 2009050043

PARENT on behalf of STUDENT ,

v.

TWIN RIVERS UNIFIED SCHOOL DISTRICT, SACRAMENTO COUNTY MENTAL HEALTH, CALIFORNIA DEPARTMENT OF EDUCATION, CALIFORNIA DEPARTMENT OF MENTAL HEALTH, AND MT. DIABLO UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2009050920

ORDER GRANTING MOTION TO CONSOLIDATE; GRANTING MOTION TO CONTINUE; AND DENYING MOTION TO BIFURCATE

On April 28, 2009, Student filed with the Office of Administrative Hearings (OAH) a due process hearing request (complaint) against the Mt. Diablo Unified School District (MDUSD), Twin Rivers Unified School District (TRUSD), Sacramento County Mental Health (SCMH), Sacramento County Office of Education (SCOE), California Department of Mental Health (CDMH), and California Department of Education (CDE). This matter was designated as OAH Case No. 2009050043.

On May 5, 2009, OAH issued a Notice of Due Process Hearing, Notice of Mediation, and Notice of Mandatory Telephonic Trial Setting Conference in OAH Case No. 2009050043. The Prehearing Conference is scheduled for June 15, 2009, at 10:00 a.m., and the Due Process Hearing for June 22, 2009.

On May 21, 2009, Student filed a Request for Due Process Hearing against TRUSD, SCMh, CDE, CDMH, and MDUSD. This matter was designated as OAH Case No. 2009050920.

On May 27, 2009, OAH issued a Notice of Due Process Hearing, Notice of Mediation, and Notice of Mandatory Telephonic Trial Setting Conference in OAH Case No. 2009050920. The Prehearing Conference is scheduled for July 6, 2009, at 1:30 p.m., and the Due Process Hearing for July 15, 2009

On June 8, 2009, Student filed a Motion to Consolidate OAH Case Number 2009050043 with OAH Case No. 2009050920 and to continue the due process hearing date set in OAH Case No. 2009050043 until after the hearing in OAH Case No. 2009050920. Student also requested to bifurcate the hearing so that the issues in OAH Case No. 2009050920 are heard and decided before the issues in OAH Case No. 2009050043.

On June 11, 2009, TRUSD and SCMh filed a request to joining in Student's motion to consolidate, continue and bifurcate. The other parties did not respond to the motion.

DISCUSSION

Consolidation

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 involve common questions of law or fact regarding Student's unique needs, need for residential placement, and responsibility by local educational agencies. Further, the only two responding parties that submitted a response, TRUSD and SCMh, do not oppose the motion. In addition, consolidation furthers the interests of judicial economy because both cases will involve the same witnesses, evidence and questions of law. Therefore, the matters are ordered consolidated.

Continuance

Education Code sections 56502, subdivision (f), and 56505, subdivision (f)(1)(C)(3), require that a hearing be conducted and a decision rendered within 45 days of receipt of the complaint unless an extension is granted. Speedy resolution of due process hearings is

mandated by law and continuance of due process hearings may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f)(1)(C)(3).)

Student's motion to continue the hearing demonstrates good cause for a continuance in that both matters should be heard as scheduled in OAH Case No. 2009050920. Therefore, the motion to continue is granted.

Bifurcation

Student requests that OAH bifurcate the hearing in the consolidated matter so that OAH Case No. 2009050920 is heard and decided before the issues in OAH Case No. 2009050043. Student asserts that the matters should be bifurcated to allow a faster resolution by determining which public agency is presently responsible for Student's education since Student turned 18 years old and the responsible public agency that must make a present offer of placement and services. Student did not establish that the facts and law in the consolidated case warrant bifurcation because the factors that support consolidation do not support bifurcation of the issues regarding Student's past and future educational placement and services and agency responsibility. Thus, because of the common questions of law and fact, bifurcation is not warranted to promote judicial economy. Therefore, the request to bifurcate the hearing is denied.

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. 2009050043 are vacated.
3. Student's Motion to Continue is granted. The Mediation in the consolidated cases shall be held on June 25, 2009, the Prehearing Conference shall be held on July 6, 2009, and the Due Process Hearing on July 15, 2009.
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. 2009050920.
5. Student's Motion to Bifurcate is denied.

Dated: June 12, 2009

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings