

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT on behalf of STUDENT, v. SOUTH PASADENA UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2009061090
SOUTH PASADENA UNIFIED SCHOOL DISTRICT, v. PARENT on behalf of STUDENT.	OAH CASE NO. 2009060747 ORDER GRANTING MOTION TO CONSOLIDATE AND DENYING MOTION TO CONTINUE

On June 12, 2009, South Pasadena Unified School District filed a Request for Due Process Hearing (District's Complaint), naming Student as the sole respondent. This matter was designated as OAH Case No. 2009060747.

On June 16, 2009, OAH issued a Scheduling Order and Notice of Due Process Hearing and Mediation on the District's Complaint (OAH Case Number N2009060747), setting the following dates: Mediation for July 1, 2009; Prehearing Conference for July 6, 2009, 10:00 a.m.; and the Due Process Hearing for July 13, 2009.

On June 22, 2009, Student filed a Request for Due Process Hearing (Student's Complaint), naming South Pasadena Unified School District as the respondent. This matter was designated as OAH Case No. 2009061090.

On June 24, 2009, OAH issued a Scheduling Order and Notice of Due Process Hearing and Mediation on the Student's Complaint (OAH Case Number N2009061090), setting the following dates: Mediation for July 27, 2009; Prehearing Conference for August 10, 2009, at 10:00 a.m.; and the Due Process Hearing for August 17, 2009.

On June 23, 2009, Student filed a Motion to Consolidate OAH Case Number 2009060747 [District's Complaint] with OAH Case No. 2009061090 [Student's Complaint] and to continue all dates set in both matters to mediation in September and due process hearing in October, 2009.

On June 26, 2009, District submitted a response stating that it does not oppose consolidation. However, District argues that a continuance is inappropriate because it unnecessarily delays a speedy resolution.

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. Both matters concern the Student’s triennial IEP of June 2, 2009, and the IEP team’s conclusion that Student no longer qualifies for special education and related services.

Student’s parents disagreed with the IEP team’s recommendations and conclusions and requested several independent educational evaluations [IEEs]. District filed its Complaint, requesting a determination that District is not obligated to fund the requested IEEs and that Student is no longer eligible for special education and related services.

In Student’s Complaint, Student asserts that the District failed to properly assess Student and that the IEP team erred in concluding Student is no longer eligible. Student requests determinations that the District fund the requested IEEs by reimbursing parents and that Student is eligible for special education and related services.

The two Complaints involve the same issues. Also, consolidation furthers the interests of judicial economy because the issues involve the same documentary evidence and witness testimony. Accordingly, the motion to consolidate is granted.

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 asserts that the District denied Parents the opportunity to have their expert observe the Student prior to the end of the 2008-09 school year. Student therefore requests that mediation of the consolidated matters be continued to September 2009, enabling the Parents' expert to observe Student in the class setting.

Student's motion to continue the mediation and hearing fails to demonstrate good cause for a continuance. Student does not propose any specific dates, other than to generally refer to September 2009 for mediation and October 2009 for due process hearing. Also, Student does not indicate why Parents' expert cannot evaluate the student without observing the student in class.

The Student's motion to continue 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 in District's Complaint, OAH Case No. 2009060747, are vacated.
3. Student's Motion to Continue is denied.
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 No. 2009061090.
5. The dates set for proceedings in Student's Complaint, OAH Case No. 2009061090, shall apply to these consolidated cases. The Mediation is July 27, 2009, at 9:30 a.m.; the Prehearing Conference is August 10, 2009, at 10:00 a.m.; and the Due Process Hearing is set for August 17, 2009.

Dated: June 29, 2009

/s/

CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings