

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

SANTA MONICA-MALIBU UNIFIED  
SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2010050318

ORDER DENYING MOTION TO  
CONSOLIDATE AND DENYING  
MOTION TO CONTINUE

On May 11, 2010, Santa Monica – Malibu Unified School District (District) filed a due process hearing request in the instant matter (OAH case number 2010050318) naming Student as the respondent (District’s Case). District’s case alleged a single, discrete issue of whether the District’s November 9, 2009 psycho-educational assessment was done properly, such that District had no duty to provide Student with an IEE at public expense. On May 25, 2010, the parties stipulated to continue District’s case to the current dates, with a PHC on October 6, 2010 and a hearing on October 19-22, 2010. The parties attended mediation on July 13, 2010.

On September 21, 2010, Student filed her own due process hearing request (OAH case number 2010090876) naming District as the respondent (Student’s Case). Student’s Case is set for a PHC on November 15, 2010, and a single hearing day on December 6, 2010. The issues in Student’s Case relate to an IEP developed on April 22, 2009, as well as IEP team meetings held in November of 2009, December of 2009 and February of 2010. Student’s case alleges that she was denied a FAPE for the last two school years because the IEP offers: were predetermined; based on incomplete or insufficient assessments; based in inaccurate present levels of performance; contained inappropriate goals; offered inappropriate counseling services; offered insufficient related services to meet her needs to address emotional, attention, and academic needs; and deprived her of placement in the least restrictive environment.

Student concurrently filed a motion to consolidate District’s Case and Student’s Case. Student contends that consolidation and a continuance is necessary because there are common issues of law and fact, and because the parties have not been otherwise able to resolve disputes about Student’s program. On September 24, 2010, District filed an opposition on the ground that consolidation is not appropriate because although District’s sole issue is subsumed in part of Student’s Case, there are too many other unrelated issues to warrant consolidation. Moreover, District contends that consolidation would deprive it of its right to a timely disposition. On September 27, 2010, Student filed a reply, contending that District would not be prejudiced by consolidation. As discussed below, neither consolidation, nor a continuance is warranted under these facts.

### *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, the sheer volume of issues over multiple school years alleged by Student compared to the sole, discrete issue alleged by District, demonstrates that consolidation would not result in judicial economy or efficiency. Rather, the opposite is more likely, i.e., a consolidated case would likely be more time consuming. This is particularly true when resolution of whether the November 9, 2009 psycho-educational assessment was appropriate could resolve some of Student's multiple claims, either favorably or unfavorably, about the IEP offers made based on the assessment. There is no danger of inconsistent rulings as both parties will have a full opportunity to present evidence regarding the propriety of the assessment at issue in the District's Case, and District's Case, as currently calendared, will result in a decision prior to the beginning of Student's Case.

In sum, consolidation of District's discrete issue with Student's multitude of procedural and substantive issues over multiple school years does not sufficiently further judicial economy or prevent inconsistent rulings to warrant consolidation.

### *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).)

Here, Student has requested a continuance "to accommodate consolidation and permit the orderly processing of the consolidated matters." Because consolidation is denied, Student has not demonstrated good cause to continue the hearing dates in District's Case. The request for a continuance is denied.

ORDER

1. Student's Motion to Consolidate is denied.
2. Student's Motion to Continue is denied. All dates previously set for hearing in this matter (OAH case number 2010050318) shall remain as scheduled.

Dated: September 29, 2010

/s/

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RICHARD T. BREEN  
Administrative Law Judge  
Office of Administrative Hearings