

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Consolidated Matters of:  PARENTS ON BEHALF OF STUDENT,  v.  MODESTO CITY SCHOOLS,	OAH CASE NO. 2010080550
MODESTO CITY SCHOOLS,  v.  PARENTS ON BEHALF OF STUDENT.	OAH CASE NO. 2010080275  ORDER GRANTING MOTION TO CONSOLIDATE AND GRANTING MOTION TO CONTINUE

On August 6, 2010, Modesto City Schools (District) filed a Request for Due Process Hearing in OAH case number 2010080275 (District’s Case), against Student.

On August 13, 2010, Student filed a Request for Due Process Hearing in OAH case number 2010080550 (Student’s Case), against the District.

On August 13, 2010, Student filed a Motion to Consolidate the District’s Case with Student’s Case, and to continue the hearing dates. The District did not submit a response.

APPLICABLE LAW and DISCUSSION

*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, both cases involve a common question of law or fact, specifically, whether the District's proposed May 21, 2010 individualized education program, as amended on August 6, 2010, provides Student with a free appropriate public education. In addition, consolidation furthers the interests of judicial economy because the cases will involve the same witnesses and evidence. Regarding Student's request as to the burden of persuasion, this issue can be raised at the prehearing conference. Accordingly, consolidation is granted.

*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).)

Student's motion to continue the hearing demonstrates good cause for a continuance, based on Student's counsel's declaration regarding her medical condition.

ORDER

1. Student's Motion to Consolidate is granted.
2. All dates previously set in OAH Case Number 2010080275 (District's Case) are vacated.
3. Student's Motion to Continue is granted. The parties shall participate in a trial setting conference on October 6, 2010, at 10:00 a.m. OAH will initiate the call.
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 Number 2010080550 (Student's Case).

Dated: August 18, 2010

/s/  
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PETER PAUL CASTILLO  
Administrative Law Judge  
Office of Administrative Hearings