

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

BALDWIN PARK UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2010080694

ORDER DENYING MOTION TO
CONSOLIDATE

On August 19, 2010, District filed a Request for Due Process Hearing (complaint) in OAH case number 2010080694 (First Case), naming Student. First Case is set for hearing on October 5, 6, and 7, 2010 per an Order granting a continuance for good cause dated September 13, 2010 by the undersigned administrative law judge.

On September 14, 2010 Parent's attorney on behalf of Student filed a Request for Due Process Hearing and for Mediation in OAH case number 2010090527 (Second Case), naming District. On September 14, 2010, Student also filed a Motion to Consolidate First Case with Second Case. Student did not request a continuance of the hearing dates in First Case, nor did Student offer evidence that Student was waiving its right to a resolution session in Second Case.

On September 14, 2010, District filed an objection to Student's motion. While District did not oppose consolidation, District opposed continuance of the hearing dates set in First Case. For the reasons discussed below, Student's motion is denied.

APPLICABLE LAW

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].)

A local educational agency (LEA) is required to convene a resolution meeting with the parents and the relevant members of the Individualized Education Program (IEP) team within 15 days of receiving notice of the Student's complaint. (20 U.S.C. §

1415(f)(1)(B)(i)(I);¹ 34 C.F.R. § 300.510(a)(1) (2006).) If the parents do not participate in the resolution session, and it has not been otherwise waived by the parties, a due process hearing shall not take place until a resolution session is held. (34 C.F.R. § 300.510(b)(3) (2006).)

DISCUSSION

Here, the parties agree that the First Case and Second Case involve a common question of law or fact and that consolidation is appropriate. However, District opposes further continuance of the hearing dates in First Case. Second Case may not go to hearing unless or until a resolution session has taken place or has been waived, and no evidence has been offered that either has occurred.

District is entitled to proceed to hearing on its complaint in a timely manner. Therefore, Student's motion to consolidate must be denied in the absence of evidence that parents have waived their right to a resolution session.

ORDER

1. Student's Motion to Consolidate is denied.
2. All dates previously set for hearing in this matter shall remain as scheduled.

Dated: September 16, 2010

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings

¹ All statutory citations are to Title 20 United States Code unless otherwise indicated.