

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

NEWPORT-MESA UNIFIED SCHOOL
DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NOS. 2010110309,
2010040608

ORDER GRANTING MOTION TO
CONSOLIDATE AND FURTHER
GRANTING MOTION TO CONTINUE

On April 6, 2010, counsel for Student's mother, on behalf of Student, filed with the Office of Administrative Hearings (OAH) a Request for Due Process Hearing (Student Complaint) which named the Newport-Mesa Unified School District (District). OAH assigned this matter Case No. 2010040608. On October 25, 2010, counsel representing Student's father filed with OAH an appearance in Case No. 2010040608.

In Case No. 2010040608, there is currently scheduled a due process hearing set for November 15, 16, 17 and 18, 2010.

On November 3, 2010, the District filed with OAH a Request for Due Process Hearing (District Complaint) that named Student. OAH assigned this matter Case No. 2010110309. Currently pending in the District Complaint are the following hearing dates: a mediation set for November 18, 2010, a prehearing conference set for December 1, 2010, and a due process hearing set for December 6, 2010.

Also on November 3, 2010, the District filed with OAH a Motion to Consolidate which seeks to join Case Nos. 2010040608 and 2010110309. On November 8, 2010, counsel for Father filed with OAH an opposition to the Motion to Consolidate. However, on November 10, 2010, the attorneys representing Mother and Father filed with OAH a Joint Motion to Continue Due Process Hearing. In the Joint Motion, the attorneys informed that they do not oppose the Motion to Consolidate. Counsel for the District, likewise, does not oppose the joint motion to continue the presently scheduled due process hearing in Case No. 2010040608.

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 Student Complaint and the District Complaint involve common questions of law or fact, and consolidation furthers the interests of judicial economy. Accordingly, consolidation is granted. There is also good cause to grant the joint request to continue the due process hearing.

ORDER

1. The Motion to Consolidate brought by Newport-Mesa Unified School District is granted.
2. All dates previously set in Case No. 2010040608 (Student Complaint) and Case No. 2010110309 (District Complaint) are vacated.
3. The Joint Motion to Continue brought by Student's parents is granted. The prehearing conference in the consolidated cases is hereby set for December 29, 2010, at 10:00 a.m. The due process hearing in the consolidated cases is hereby set for January 4, 5, 6, 7, 10, 11, 12 and 13, 2011. If the parties wish to mediate the consolidated cases, the parties shall notify OAH of a mutually convenient date for such mediation.
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. 2010110309 (District Complaint).

IT IS SO ORDERED.

Dated: November 12, 2010

/s/

TIMOTHY L. NEWLOVE
Presiding Administrative Law Judge
Office of Administrative Hearings