

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

ELK GROVE UNIFIED SCHOOL
DISTRICT.

OAH CASE NOS. 2011010244 and
2011010354

ORDER GRANTING MOTION TO
CONSOLIDATE AND MOTION TO
FILE FIRST AMENDED REQUEST
FOR DUE PROCESS

On January 7, 2011, Parents, on behalf of Student, filed with the Office of Administrative Hearings (OAH), a Request for Due Process Hearing (Student Complaint) that named the Elk Grove Unified School District (District). OAH assigned Case No. 2011010244 to the Student Complaint.

Currently pending in the Student Complaint is a mediation set for February 10, 2011, a prehearing conference set for February 23, 2011, and a due process hearing set for March 3, 2011.

On January 12, 2011, counsel for the District filed with OAH a Request for Due Process (District Complaint) that named Student. OAH assigned Case No. 2011010354 to the District Complaint.

Currently pending in the District Complaint is a prehearing conference set for February 2, 2011, and a due process hearing set for February 8, 2011.

On January 19, 2011, counsel for Student filed with OAH a Motion to Consolidate which seeks to join Case No. 2011010244 and Case No. 2011010354.

On January 24, 2011, counsel for the District filed with OAH a Non-Opposition to Motion to Consolidate and a Request to File First Amended Request for Due Process Hearing, with a supporting declaration. The request to amend contains a copy of the District's proposed First Amended Request for Due Process Hearing.

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 proposed First Amended District Complaint share common questions of law and fact. Accordingly, consolidation of Case Nos. 2011010244 and 2011010354 is granted.

Special education law provides that a party may amend a due process complaint under certain circumstances, including when a hearing officer grants permission, provided that the amendment does not occur within five days before the commencement of the hearing on the matter. (34 C.F.R. § 300.508(d)(3)(ii)(2006).) Here, the District's request to file a First Amended Request for Due Process Hearing is timely, and shall be granted.

ORDER

1. Student's Motion to Consolidate OAH Case No. 2011010244 and Case No. 2011010354 is granted.
2. All dates previously set in OAH Case No. 2011010354 (District Complaint) are vacated.
3. District's Motion to File a First Amended Request for Due Process Hearing is granted. The amended pleading shall be deemed filed as of the date of this Order.
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. 2011010244 (Student Complaint).
5. Until such time as the parties request a continuance, the consolidated cases, including the District's amended complaint, shall be subject to the currently scheduled mediation and hearing dates in OAH Case No. 2011010244.

Dated: January 26, 2011

/s/

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