

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. SOUTHERN KERN UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2011050800
SOUTHERN KERN UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2011060926 ORDER GRANTING MOTION TO CONSOLIDATE AND DENYING MOTION TO CONTINUE

On May 19, 2011, Parent on behalf of Student (Student) filed a Due Process Hearing Request (complaint), naming Southern Kern Unified School District (District) as the respondent. On June 1, 2011, Student filed a Notice to Amend the Due Process Hearing Request. OAH issued an order granting the filing of the amended complaint on June 7, 2011 (First Case). The First Case is scheduled for a prehearing conference on July 27, 2011 at 1:30 p.m. and a one-day hearing on August 2, 2011 at 9:30 a.m.

On June 20, 2011, District filed a Request for Due Process Hearing in OAH case number 2011060926 (Second Case), naming Student. The Second Case is scheduled for a prehearing conference on July 13, 2011 at 10:30 a.m. and a one-day hearing on July 18, 2011 at 1:30 p.m.

On June 21, 2011, District filed a Motion to Consolidate the First Case with the Second Case and to continue the due process hearing date set in Case Number 2011050800 (First Case). Student did not file a response to the motion.

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 First Case and Second Case involve a common question of law or fact, specifically; the first case raises two issues. The issues in the First Case are whether District failed to provide a free appropriate public education (FAPE) in the 2010-2011 school year by (1) failing to provide home hospital instruction and (2) failing to timely develop a proposed assessment plan? Student requests that District fund an independent educational evaluation (IEE) as a remedy to issue number 2. The sole issue in the Second Case is whether Student is entitled to an IEE at District expense? District requests an order that Student is not entitled to an IEE funded by District. Student does not oppose the motion.

Consolidation is appropriate because the First and Second case involve common questions of law and/or fact and the same parties. In addition, consolidation furthers the interests of judicial economy because. Accordingly, consolidation is granted.

Continuance

District has also requested a continuance of the consolidated matter because each case is set for a one-day hearing and District estimates the matter requires multiple days for hearing. However, District has not provided multiple dates when it is available, nor is there a stipulation to multiple dates. 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).)

In general, a request for a continuance to obtain multiple, continuous hearing dates, constitutes good cause. OAH generally requires parties to meet and confer to attempt to agree to dates prior to making a request. In this instance, District has not provided any proposed dates, nor sought to meet and confer with Student to attempt to agree to dates. Accordingly, although OAH is inclined to grant a continuance, it will not do so until after District has attempted to meet and confer with Student to find mutually agreeable dates. If no mutually agreed dates can be found, District at a minimum must suggest dates when it is available. Thus, District's motion to continue is denied. The parties are required to submit proposed dates for a multiple day hearing in this consolidated matter.

ORDER

1. District's Motion to Consolidate is granted.
2. All dates previously set in OAH Case Number 2011060926 (Second Case) are vacated.
3. District's Motion to Continue is denied. The current scheduling order in the First Case shall govern. The Prehearing Conference in the consolidated cases shall be held on July 27, 2011 at 1:30 p.m. and a one-day hearing on August 2, 2011 at 9:30 a.m.
4. The parties may submit a request for continuance of the consolidated matter for multiple days of hearing with proposed dates for hearing.
5. 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 2011050800 (First Case).

Dated: June 27, 2011

/s/

STELLA OWENS-MURRELL
Administrative Law Judge
Office of Administrative Hearings