

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

OAH CASE NO. 2011100526

v.

MORGAN HILL UNIFIED SCHOOL
DISTRICT,

MORGAN HILL UNIFIED SCHOOL
DISTRICT,

OAH CASE NO. 2011061147

v.

PARENT ON BEHALF OF STUDENT.

ORDER GRANTING MOTION TO
CONSOLIDATE

On June 24, 2011, Morgan Hill Unified School District (District) filed a request for due process hearing with the Office of Administrative Hearings (OAH) in OAH case number 2011061147 (First Case), naming Student..

On October 14, 2011, Student filed a complaint on his own behalf in OAH case number 2011100526 (Second Case), naming the District. On the same date, Student filed a Motion to Consolidate the First Case with the Second Case. Student did not seek to continue the due process hearing which is currently set to begin on October 24, 2011. However, unless the parties agree to waive the resolution session for the Student filed case, the due process hearing must be continued so that a resolution session may be held.¹ On October 19, 2011, the district filed its opposition to consolidation. However, the District also asked that if OAH was to grant the motion for consolidation, that it continue the due process hearing.

APPLICABLE LAW

¹ A local educational agency (LEA) is required to convene a 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); 34 C.F.R. § 300.510(a)(1).) The resolution session need not be held if it is waived by both parties in writing or the parties agree to use mediation. (34 C.F.R. § 300.510(a)(3).) 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).)

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].)

Continuation

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).)

DISCUSSION

Here, the First Case and Second Case involve a common question of law or fact, specifically, whether the District's offer of placement of Student in a District high school offered him a free appropriate public education (FAPE) for the 2011-2012 school year. Student's complaint also requests specific remedies if OAH finds that the District's offer was not a FAPE. Accordingly, consolidation is granted. Since there is no evidence that Student has waived his right to a resolution session, new dates will be set in the consolidated matter.

ORDER

1. Student's Motion to Consolidate is granted.
2. All dates previously set in OAH Case Number 2011061147 (First Case) are vacated.
3. 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 2011100526 (Second Case).

Dated: October 20, 2011

/s/

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings