

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. LOS ANGELES UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2013050472
LOS ANGELES UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2013070033 ORDER GRANTING MOTION TO CONSOLIDATE AND CONTINUANCE OF STUDENT’S CASE, AND DENYING MOTION TO CONTINUE CONSOLIDATED HEARING TO ON OR AFTER AUGUST 17, 2013

On May 13, 2013, parents on behalf of student (Parents) filed a Request for Due Process Hearing (complaint) with the Office of Administrative Hearings (OAH) case number 2013050472 (First Case), naming Los Angeles Unified School District (District). On May 15, 2013, OAH issued a Scheduling Order and Notice of Due Process Hearing and Mediation in the First Case with the following dates: (1) June 18, 2013 for mediation; (2) June 26, 2013 for a pre-hearing conference (PHC); and (3) July 10, 2013 for the due process hearing (DPH).

At the June 26, 2013 PHC of the First Case, District requested a DPH continuance because of a conflict with its counsel’s vacation schedule. Mother represented Student at the PHC and informed the Administrative Law Judge (ALJ) that she would be representing Student at hearing. Mother opposed District’s continuance request because it potentially imposed an additional financial burden on Student’ family and a potential workplace conflict, because Mother would be starting a new job and Father would have to request additional unpaid leave if the DPH was continued. District’s request was denied because the vacation plans of its counsel, by itself, did not constitute good cause, and the continuance would be prejudicial to Parents. The DPH for the First Case was scheduled for July 10, 11, 15 and 16, 2013.

On June 27, 2013, District filed a Request for Due Process Hearing in OAH case number 2013070033 (Second Case), naming Parent. On June 28, 2013, District filed a Motion to Consolidate the First Case with the Second Case and to continue the DPH to on or after August 17, 2013.

On July 1, 2013, OAH issued a Scheduling Order and Notice of Due Process Hearing and Mediation in the Second Case with the following dates: (1) July 11, 2013 for mediation; (2) July 15, 2013 for a PHC; and (3) July 25, 2013 for the DPH (continuing day to day).

On July 2, 2013, Parents filed a Response to the Motion to Consolidate where they agreed with the consolidation of the two cases, but objected to the DPH continuance of both cases to August 17, 2013, and requested that the DPH of both cases proceed according to the schedule of the First Case.

On July 3, 2013, District filed an opposition to Parents' request that the consolidated cases proceed according to the DPH schedule of the First Case, and instead continue the DPH dates to on or after August 17, 2013.

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, Parents were right to agree to the consolidation, as both cases involve a common question of law or fact, specifically related to Student's placement and services. In addition, consolidation furthers the interests of judicial economy because the same witnesses will need to testify in both cases and the same documentary evidence, including the October 18, 2011, individualized education program (IEP) and the February 10, 2012 settlement agreement, will need to be considered. Accordingly, consolidation is granted.

Continuance

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).)

Balancing the interests of both parties as set forth below, the DPH dates of the First Case shall be continued to the DPH dates of the Second Case so that the parties are provided the full time allowed under the Individual with Disabilities Education Act (IDEA) to prepare for the Second Case as part of the consolidated DPH. Parents may face some additional

financial burdens by the continuance of the First Case to the Second Case, due to Father's workplace requirements, but Mother will be presenting the case, Parents agreed to consolidation, and the short two-week continuance of the DPH is required under the IDEA to afford both parties adequate time to mediate and prepare the Second Case for hearing. Mother represented that she will be representing Student and available for hearing before August 13, 2013. She represented that Father may face some limitations on his ability to change his work schedule and an additional reduction in pay for newly scheduled DPH days. Father is not required to be present all days of the DPH because Mother will be presenting the case. Mother also claimed that she may have difficulty scheduling an independent evaluator for testimony if the dates of the DPH were changed. However, Mother provided no definitive information about the independent evaluator's availability. For these reasons, District's request for continuance will be granted and the First Case, shall be continued to the dates OAH scheduled for the Second Case.

District's request for a DPH continuance to August 17, 2013, is denied as District failed to demonstrate good cause, and a continuance to August 17, 2013 will be unduly prejudicial to Parents. After the PHC in the First Case, District hired new counsel, who filed the Second Case, requested consolidation, again moved for a continuance, whether the cases were consolidated or not. New counsel filed her notice of representation with OAH on June 26, 2013, the day of the PHC with knowledge of the DPH schedule in the First Case. District's new counsel requested a second continuance because counsel was retained after planning a vacation and purchasing nonrefundable airline tickets and District's key witnesses were on summer vacation. At the June 26, 2013 PHC, District's first continuance request was denied due to in-house counsel's vacation schedule. Although inconvenient to new counsel, without more, new counsel's conflicting vacation plans do not constitute good cause for a continuance. Further, District's problem securing witnesses does not justify a continuance given the timing of the Second Case, and the prejudice to Student of any further continuances. District elected to file the Second Case after the PHC, based upon facts and witnesses it was aware of at the April 3, 2013 IEP. District had ample time to interview witnesses and find out their schedules.

District's request to continue the hearing to August 17, 2013, is unnecessarily prejudicial to Student. As Mother stated in the First Case, she will be Student's representative at the DPH and for that reason postponed starting a new job until August 13, 2013, to avoid a schedule conflict between the DPH and her new job. Continuing the DPH beyond the dates scheduled for the Second Case will prejudice Mother's ability to present her case at the DPH and potentially impact her performance record at her new job.

ORDER

1. District's Motion to Consolidate is granted.
2. District's Motion to Continue the Consolidated Hearing is granted in part. The DPH dates in the First Case are vacated, and the First Case is continued as of the date of this Order to the DPH dates of the Second Case. All other dates assigned to the Second Case shall apply to the consolidated cases including: (1) July 11, 2013, mediation; (2) July 15, 2013, PHC; 3:00 p.m.; and (3) July 25, 2013, DPH (continuing day to day). The consolidated case schedule is as follows: July 25, 2013, 9:30 a.m., July 29, 2013, 1:30 p.m., July 30, 31, and August 1, 2013, 9:30 a.m., August 5, 2013, 1:30 p.m., August 6, 2013, 9:30 a.m., and continuing day to day, Monday through Thursday (at the discretion of the ALJ).
3. District's request to continue the consolidated hearing to on or after August 17, 2013, is denied.
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 Number 2013050472, the First Case.
5. The primary case shall be the First Case, and the parties shall use the consolidated caption for all filings after this date.

Dated: July 08, 2013

/s/

SABRINA KONG
Administrative Law Judge
Office of Administrative Hearings