

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENTS ON BEHALF OF STUDENT,

OAH Case No. 2014020555

v.

DEL MAR UNION SCHOOL DISTRICT,

DEL MAR UNION SCHOOL DISTRICT,

OAH Case No. 2013110851

v.

PARENTS ON BEHALF OF STUDENT.

ORDER GRANTING MOTION TO
CONSOLIDATE AND DENYING
REQUEST TO MAINTAIN CURRENT
DATES

On November 25, 2013, the Del Mar Union School District (Del Mar) filed a Request for Due Process Hearing in the Office of Administrative Hearings (OAH) case number 2013110851 (First Case) naming Student.¹

On February 13, 2014, Student filed a Request for Due Process Hearing in OAH case number 2014020555 (Second Case) naming Del Mar.

On February 13, 2014, Student filed a motion to consolidate the two cases arguing that both cases involve common questions of law and fact. On February 14, 2014, Del Mar filed a notice of non-opposition to the motion. As discussed below, Student's motion to consolidate is granted.

APPLICABLE LAW

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

¹ Del Mar amended its complaint on December 17, 2013 and all applicable timelines were reset as of that date.

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].)

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Speedy resolution of the due process hearing is mandated by law and continuance of the hearing may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f)(3).) In ruling upon a motion for continuance, OAH is guided by the provisions found within the Administrative Procedure Act and the California Rules of Court that concern motions to continue. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, rule 3.1332.) Generally, continuances of matters are disfavored. (Cal. Rules of Court, rule 3.1332(c).)

DISCUSSION

First Case raises only two issues. The first issue is whether Del Mar's June 10, 2013 individualized education program (IEP) offer, as revised on November 1, 2013, provides Student with a free appropriate public education (FAPE) in the least restrictive educational setting. The second issue raises the question of whether Del Mar has fulfilled its procedural and substantive FAPE obligations to Student during the 2012-2013 and 2013-2014 school years.

Second Case raises three procedural and substantive issues, with several sub-issues, that are similar to the issues raised in Del Mar's complaint. Student alleges that Del Mar's IEP offers to her, during the 2012-2013 and the 2013-2014 school years, were not designed to provide her with a FAPE and that the placement, services and supports provided by Del Mar were inadequate to meet her unique needs. Also, Student alleges that Del Mar violated her procedural rights to a FAPE during the two school years.

The two cases involve the same parties, and cover same or similar issues and timelines. They present common questions of law and fact, as they relate to Student's right to a FAPE and Del Mar's obligations under the Individuals with Disabilities Education Act to provide and ensure that Student receives a FAPE.

Consolidation of these cases will further the interests of judicial economy because the issues raised in both cases involve Student's unique educational needs and the question of whether Del Mar meets its procedural and substantive obligations to provide Student with a FAPE. Evaluating and addressing the issue raise would involve the same evidence and witnesses, and the analysis and resolution of the same questions of law. Therefore, consolidating the cases will promote judicial economy, and accordingly, consolidation is granted.

Del Mar's Request to Maintain the Dates Currently Set in First Case

With its notice of non-opposition to the motion to consolidate, Del Mar requested that OAH should maintain the dates currently set in First Case as new dates for mediation, prehearing conference and the due process hearing in the consolidated matters. No response was received from Student regarding the request.

As discussed below, the timeline for issuance of the decision in the consolidated cases shall be based on the date of the filing of the complaint in the Second Case and all dates currently set in the First Case shall be vacated. Accordingly, Del Mar's request to use or maintain the dates currently set in the First Case, in the consolidated matters, is denied.

ORDER

1. Student's Motion to Consolidate is granted.
2. All dates previously set in OAH Case Number 2013110851 (First Case) are vacated and Del Mar's request to maintain those dates is denied without prejudice.²
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 2014020555 (Second Case).

DATE: February 19, 2014

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings

² Nothing in this order precludes either party from making a motion to continue the dates in Second Case. .