BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: VAL VERDE UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2014020761
VAL VERDE UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2014030737 ORDER GRANTING MOTION TO CONSOLIDATE AND DENYING STUDENT'S REQUEST TO CONTINUE

On February 21, 2014, Val Verde Unified School District (Val Verde) filed with the Office of Administrative Hearings (OAH) a Request for Due Process Hearing in OAH case number 2014020761 (First Case), naming Parent on Behalf of Student (Student). This matter is set for hearing on May 27, 2014, with a prehearing conference (PHC) on May 19, 2014.

On March 19, 2014, Val Verde filed a second Request for Due Process Hearing in OAH case number 2014030737 (Second Case), naming Student. This matter is currently set for hearing on April 15, 2014, with a prehearing conference on April 7, 2014, and mediation on April 3, 2014.

On March 19, 2014, Val Verde filed a Motion to Consolidate the Second case with the First Case. On March 24, 2014, Student filed an opposition to consolidation on the ground that consolidation would result in delay and deny her the right to a timely due process hearing, that she would also be prejudiced given the complexity of the issues. Student requests a continuance until the end of July 2014, if consolidation is granted. On March 25, 2014, Val Verde filed a response to Student's opposition. Val Verde opposes Student's request for a 60-day continuance.

APPLICABLE LAW

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].)

Continuance

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

Consolidation

Here, the First Case and Second Case involve common questions of law and fact. Specifically, Val Verde's First Case raises the issue of whether its initial eligibility assessments of Student conducted in November and December of 2013, in the areas of speech, occupational therapy, physical therapy and adaptive physical education were appropriate such that Student is not entitled to independent educational evaluations at public expense. In its Second Case, Val Verde seeks an order that its December 18, 2013 individualized education program (IEP), which was based upon its initial assessments, as amended on January 29 and February 20, 2014, constitutes an offer of a free appropriate public education (FAPE) in the least restrictive environment and that it may implement this offer. Given the overlapping nature of the issues of the appropriateness of Val Verde's assessments and its offer of a FAPE, or whether it must fund independent educational evaluations, consolidation is warranted and will prevent the risk of inconsistent rulings

In addition, consolidation furthers the interests of judicial economy because both cases involve the same parties and many of the same witnesses would be required to testify in each proceeding. Each matter will also involve introduction of the same or similar documents including relevant assessment reports. Accordingly, consolidation is granted.

When consolidating cases, OAH designates the statutory timelines applicable to the consolidated matters to be controlled by one of the cases. Here, the statutory timelines shall be controlled by the First Case.

Continuance

Student requests a 60-day continuance if consolidation is granted on the grounds that Student needs additional time to prepare for hearing and evaluate if she will request administrative relief. Val Verde opposes a continuance. Student has two months to prepare for the consolidated hearing. Further, Student retains the right to file her own request for a due process hearing. Because Student has not established good cause, her request for continuance is denied without prejudice. If Student believes she has additional grounds to request a continuance she may file a motion to continue or discuss grounds for a second joint continuance request with Val Verde.

ORDER

1. Val Verde's Motion to Consolidate is granted.
2. All dates previously set in OAH Case Number 2014030737, the Second Case are vacated.
3. The consolidated cases shall now be heard on the dates currently set for the First Case, OAH Case No. 2014020761. Namely, the PHC for the consolidated cases shall be held on May 19, 2014, at 10:00 a.m., and the due process hearing shall begin on May 27, 2014, at 1:30 p.m., and continue day to day, Monday through Thursday, as needed and at the discretion of the Administrative Law Judge.[1]
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 2014020761, the First Case.
5. Student's motion to continue is denied without prejudice.

DATE: March 27, 2014

/s/
THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings

[1] The parties are encouraged to discuss an agreeable date for mediation and file a written request for mediation with OAH.