BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2013051152
SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2013040629 ORDER GRANTING MOTION TO CONSOLIDATE

On April 12, 2013, Santa Monica-Malibu Unified School District (District) filed a Request for Due Process Hearing naming Student in OAH Case Number 2013040629 (First Case). The issue in the First Case was whether District's February 2013 psycho-educational and academic assessments were properly conducted, such that Student is not entitled to independent educational evaluation (IEE) at public expense.

A prehearing conference (PHC) was held in the First Case on May 6, 2013. Student requested a continuance of the due process hearing on the grounds Student intended to file a due process request and to move to consolidate the two cases. District opposed the motion. Student's request was denied because no good cause was shown to continue the District's pending case, which was then set for hearing on agreed dates, based on the possibility that another case might be filed.

On May 28, 2013, Student filed a Request for Due Process Hearing naming District in OAH case number 2013051152 (Second Case). The Second Case alleges substantive and procedural violations of the IDEA related to District's assessments, Student's eligibility and Student's placement and related services.

On May 28, 2013, Student filed a Motion to Consolidate the First Case with the Second Case and to continue all dates set in the First Case to the dates applicable in the Second Case, OAH Case Number 2013051152. Student contends the First Case and the

Second Case require the same witnesses and evidence and judicial economy is served by a single hearing.

On May 29, 2013, District filed a Non-Opposition to Student's Motion to Consolidate the First Case with the Second Case and to reset the hearing dates to the dates applicable in the Second Case.

On May 30, 2012, the Office of Administrative Hearings issued a Scheduling Order and Notice of Due Process Hearing and Mediation in the Second Case. Pursuant to the Order a mediation is to take place on July 2, 2013, a PHC is to be held on July 19, 2013 and a due process hearing is set for July 23, 2013 and continuing from day to day, Monday through Thursday as needed at the discretion of the Administrative Law Judge (ALJ).

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 issues presented in the Second Case are broader than the single issue alleged in the First Case but the First Case and the Second Case involve common questions of law and fact concerning assessment and eligibility for special education and there will be substantial overlap of witnesses and evidence. Given that District filed a non-opposition agreeing to dates applicable to the Second Case, good cause is shown, and judicial economy will be served, to consolidate the First Case and the Second Case. Accordingly, consolidation is granted.

ORDER

1. Student's Motion to Consolidate is granted.
2. All dates previously set in OAH Case Number 2013040629 (First Case) are vacated.
3. All dates set in OAH Case Number 2013051152 (Second Case) shall apply to the consolidated cases, and it is designated as the primary case. At present those dates are: Mediation July 2, 2013; Prehearing Conference July 19, 2013; and Due Process Hearing July 23, 2013, and continuing day to day at the discretion of the ALJ.
4. The 45-day timeline for issuance of the decision in the consolidated cases shall be based on the filing date of the complaint in OAH Case Number 2013051152 (Second Case).

Dated: May 31, 2013

/s/

MARIAN H. TULLY
Administrative Law Judge
Office of Administrative Hearings