BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENTS ON BEHALF OF STUDENT, v. LEMON GROVE ELEMENTARY SCHOOL DISTRICT,	OAH Case No. 2015050337
LEMON GROVE ELEMENTARY SCHOOL DISTRICT, v. PARENTS ON BEHALF OF STUDENT.	OAH Case No. 2015090042 ORDER GRANTING JOINT MOTION TO CONSOLIDATE AND PARTIALLY GRANTING JOINT MOTION TO CONTINUE

On May 13, 2015, the Office of Administrative Hearings granted Student's motion to amend his request for due process in OAH case number 2015050337 (Student's Case). Student's case named the Lemon Grove Elementary School District as the responding party.

On August 28, 2015, District filed a request for due process in OAH case number 2015090042, naming Student (District's case).

On September 1, 2015, the parties filed a joint motion to consolidate their cases. The parties also jointly moved for a continuance if OAH granted their motion to consolidate.

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, Student's case and District's case both raise the issue as to whether District's December 15, 2014, and January 23, 2015 triennial offer of placement and services to Student, as amended on or about May 20, 2015, constitutes a free appropriate public education in the least restrictive environment. While Student raises other issues in his amended request for due process, the core issues in both cases concern this offer. Both cases therefore involve common issues of fact and law. They will both involve similar witnesses and exhibits as well. Consolidation of the cases will therefore further the interests of judicial economy, obviating the need for two hearings on the same or similar issues.

Accordingly, the parties' joint motion to consolidate 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).)

Here, the parties have jointly requested a continuance of approximate one month. Although they do not give specific reasons for their request, it is the first request to continue District's case, which District recently filed. Therefore, as an initial request to continue, OAH will grant the parties' motion.

However, the parties have requested non-consecutive dates for the due process hearing. Their motion not only requests dates over two weeks that are not consecutive, but also requests non-consecutive dates within the second week of the hearing. The parties provide no explanation as to the basis for the request. Therefore, their request for non-consecutive dates is denied without prejudice. The parties may raise the issue at the prehearing conference, or file an amended motion to continue with a declaration stating the justification for the request to hold the hearing on non-consecutive dates.

ORDER

1. The parties joint Motion to Consolidate is granted.
2. All dates previously set in both case numbers are vacated.
3. The parties' joint Motion to Continue is partially granted. The hearing in the consolidated matters is continued as follows:

   Telephonic Prehearing Conference: **October 9, 2015, at 10:00 a.m.**

Due Process Hearing: **October 19, 20, 21, and 22, 2015**, starting at 1:30 p.m. on October 19, 2015, and continuing Monday through Thursday thereafter, 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 20150500337 [Student's case].

DATE: September 2, 2015

/s/
DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings

[1] The parties' motion to consolidate appears to indicate that they did not request the hearing be continued to October 12, 2015, because it is a state holiday. However, October 12, Columbus Day, is no longer a state employee holiday.