

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:	
PARENT ON BEHALF OF STUDENT,	OAH CASE NO. 2013010033
v.	
FRESNO UNIFIED SCHOOL DISTRICT,	
FRESNO UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2012120631
v.	ORDER GRANTING DISTRICT'S
PARENT ON BEHALF OF STUDENT.	MOTIONS TO CONSOLIDATE AND
	CONTINUE PREHEARING
	CONFERENCE AND HEARING

On December 17, 2012, Fresno Unified School District (District) filed a Request for Due Process Hearing with the Office of Administrative Hearings (OAH), case number 2012120631 (First Case), naming Student (Student). The District moved to continue the hearing, which was initially set for January 17, 2013, due to a scheduling conflict in another hearing. The motion was supported by declaration and exhibits. Student opposed District's motion to continue, noting harassment and animosity toward the family. On January 2, 2013, Administrative Law Judge Deidre L. Johnson granted District's motion to continue the First Case, setting the due process hearing for March 12, 13, 14, 19, and 20, 2013. In so doing, ALJ Johnson noted that the discord between the family and the District was troubling, but found that good cause existed because the OAH calendar verified that District had a conflict with another hearing, which had been previously scheduled.

On December 31, 2012, Student, by and through his Parents, filed a Request for Due Process Hearing in OAH case number 2013010033 (Second Case), naming District. On January 3, 2012, OAH issued a scheduling order, setting the prehearing conference for February 4, 2013, and the due process hearing for February 7, 2013, continuing day to day, Monday through Thursday, as needed at the discretion of the ALJ.

On January 8, 2013, District filed a Motion to Consolidate the First Case with the Second Case and, or in the alternative, to continue the due process hearing date set in case number 2013010033 (Second Case). The motion is supported by declaration and exhibits. District asserts that Student's Second Case has common issues of law and fact with its First Case, and that both cases would require some of the same witnesses' testimony, as well as consideration of the same documentary evidence. District further stated that the February 7, 2012 hearing in the Second Case conflicts with a previously scheduled hearing in District's

consolidated cases in OAH case numbers 2012110608 and 2012110688. The OAH calendar confirms the conflict of hearing dates.

District requests that the matters be consolidated and that the PHC and hearing in the consolidated cases be set for those dates which are presently scheduled in the First Case. In the alternative, if consolidation is not deemed appropriate, District requests that the PHC and hearing in the Second Case be continued to commence on April 7, 2013, arguing that the District and its counsel are scheduled for six (6) due process hearings from February 4, 2013, through March 20, 2013.

On January 14, 2013, Student filed an objection to consolidation and continuance, asserting that District's counsel is harassing Parents and denying Student his due process rights. Parents assert that District should be able to handle multiple hearings at the same time because District's law firm has more than one attorney. Parents further state that Student's Second Case has very few issues in common with the District's First Case and, consequently, Student should not be denied his right to a timely due process hearing by consolidating and continuing the hearing dates.

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, the First Case and Second Case involve common questions of law or fact. Although the identified ultimate issues for resolution differ somewhat in each complaint, the factual issues related to the legal issues are similar and require testimony from some of the same witnesses, as well as much of the same documentary evidence. For example, in the First Case, one of District's fundamental factual contentions is that the January 11, 2011 IEP was the last agreed upon, consented to, and implemented IEP. Yet, Student's complaint asserts in the Second Case that "[t]he Jan 2011 IEP is illegal, inaccurate and therefore invalid, resulting in our son [Student] being denied FAPE. This issue is connected to the Due Process filed on 12-18-12 by [District] against our son [Student] – OAH Case No. 2012120631."

The two cases have an overlap of assessments and IEPs, involve the same parties, and require some of the same witnesses. Consolidation therefore furthers the interests of judicial economy. 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).)

District requests that the consolidated cases be heard on the dates scheduled in the First Case. Both Student and District have this hearing calendared on their respective calendars. District's request for a continuance is therefore reasonable and granted. The dates in the Second Case are vacated and the consolidated matters shall be heard for the five (5) days of hearing already scheduled in the First Case; that is, March 12, 13, 14, 19, and 20, 2013.

Student did not indicate in his opposition if he believed that more than five (5) days of hearing would be necessary for the consolidated cases. If Student needs more than the allotted time, Student should notify OAH and District's counsel at the prehearing conference in the consolidated matters.

ORDER

1. District's Motion to Consolidate is granted.
2. District's Motion to Continue the hearing in the Second Case is granted.
3. All dates set in OAH Case Number 2013010033 (Second Case) are vacated.
4. These consolidated matters are scheduled as follows:

Prehearing Conference: March 4, 2013, at 1:30 PM

Due Process Hearing: March 12, 2013, at 9:30 AM,
March 13 and 14, 2013, at 9:00 AM,
March 19, 2013, at 9:30 AM, and
March 20, 2013, at 9:00 AM.

5. 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 2013010033 ([Second Case]), which shall be deemed the primary case for purposes of all further filings.

Dated: January 22, 2013

/s/

CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings