

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:	
PARENT ON BEHALF OF STUDENT,	OAH CASE NO. 2013020661
v.	
POWAY UNIFIED SCHOOL DISTRICT,	
POWAY UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2012100261
v.	
PARENT ON BEHALF OF STUDENT.	ORDER GRANTING MOTION TO CONSOLIDATE

On October 5, 2012, Poway Unified School District (District) filed a Request for Due Process Hearing in Office of Administrative Hearings (OAH) case number 2012100261 (First Case), naming Student.

On February 20, 2013, Student filed a Request for Due Process Hearing in OAH case number 2013020661 (Second Case), naming District.

On February 20, 2013, Student filed a Motion to Consolidate the First Case with the Second Case and to proceed to hearing on the dates assigned in the First Case, March 6-7, 2013.

On February 25, 2013, District filed an objection to consolidation on the grounds that consolidation of the cases using the dates from First Case would impede the District's obligation to hold a resolution session. The District has not agreed to waive the resolution session in the Second Case. Further, the District also opposes any further continuances in the First Case.

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 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 local educational agency (LEA) is required to convene a meeting with the parents and the relevant members of the Individualized Education Program (IEP) team within 15 days of receiving notice of the Student's complaint. (20 U.S.C. § 1415(f)(1)(B)(i)(I); 34 C.F.R. § 300.510(a)(1).) The resolution session need not be held if it is waived by both parties in writing or the parties agree to use mediation. (34 C.F.R. § 300.510(a)(3).) If the parents do not participate in the resolution session, and it has not been otherwise waived by the parties, a due process hearing shall not take place until a resolution session is held. (34 C.F.R. § 300.510(b)(3).) If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made and documented, the LEA may, at the conclusion of the 30-day period, request that a hearing officer dismiss the complaint. (34 C.F.R. § 300.510(b)(4).)

DISCUSSION

In this case, the Student has requested consolidation of the First Case and the Second Case. The Student proposes to waive the resolution session in the Second Case and proceed to hearing on the consolidated matter on March 6-7, 2013, as previously scheduled in the First Case. The District is unwilling to waive the resolution session in the Second Case and opposes consolidation and continuance of the hearing in the First Case.

The First Case and Second Case involve a common question of law and fact regarding the specific areas of testing which should be given to student as part of his triennial assessment. Both cases concern a dispute over an assessment plan for student's triennial assessment and have common facts. Without consolidation, there would be a danger of inconsistent rulings. Therefore, Student's Motion to Consolidate is granted, as consolidation furthers judicial economy prevents inconsistent rulings.

However, the District correctly states that Student's due process complaint may not proceed to hearing until either a resolution session has been held or mutually waived. The District has explicitly not agreed to waive the resolution session in the Second Case. Therefore, Student's request to proceed with the consolidated cases on the dates assigned in the First Case is denied and the consolidated case will proceed on the dates assigned in the Second Case to give the parties the opportunity to meet in a resolution session.

ORDER

1. Student's Motion to Consolidate is granted.
2. All dates previously set in OAH Case number 2012100261 (First Case) are vacated. The consolidated cases shall proceed on the dates scheduled in OAH Case number 2013020661 (Second Case) which are: mediation on March 26, 2013, a prehearing

conference on April 8, 2013, at 1:30 p.m., and due process hearing on April 16, 2013, and continuing day-to-day. Mediation is voluntary and either party may cancel by giving proper notice to the parties and OAH.

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 2013020661 (Second Case).

Dated: February 26, 2013

/s/

MARGARET BROUSSARD
Administrative Law Judge
Office of Administrative Hearings