

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:	
PARENT ON BEHALF OF STUDENT,	OAH CASE NO. 2013080179
v.	(PRIMARY)
TEMECULA VALLEY UNIFIED SCHOOL DISTRICT,	
TEMECULA VALLEY UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2013120529
v.	(SECONDARY)
PARENT ON BEHALF OF STUDENT.	ORDER (1) GRANTING DISTRICT'S MOTION TO CONSOLIDATE AND (2) DENYING STUDENT'S REQUEST FOR CONTINUANCE

On August 2, 2013, Parent on behalf of Student filed a request for due process hearing in OAH case number 2013080179 (First Case), naming the Temecula Valley Unified School District (District). On December 2, 2013, Student filed an amended complaint pursuant to an order granting leave to amend.

On December 17, 2013, the District filed a complaint in OAH case number 2013120529 (Second Case), naming Student.

On December 17, 2013, the District filed a motion to consolidate the First Case with the Second Case. On December 18, 2013, Student filed a non-opposition to consolidation. Student also informally requested a continuance but failed to propose dates or to indicate that she had met and conferred with District's counsel concerning mutually agreeable dates.

APPLICABLE LAW AND DISCUSSION

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 a common question of law or fact. Specifically, the First case alleges that the District denied Student a free appropriate public education (FAPE) by failing to timely assess Student or place her in an alternative residential treatment center, and by denying Student's request for an independent educational evaluation (IEE), and the Second Case seeks a determination that the District's mental health assessment was appropriate and that Student is not entitled to an IEE at public expense. Consolidation furthers the interests of judicial economy because the same witnesses and evidence will be presented in both cases on the issue of whether Student is entitled to an IEE. Accordingly, consolidation is granted.

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 for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances are disfavored. Good cause may include the unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances; substitution of an attorney when the substitution is required in the interests of justice; a party's excused inability to obtain essential testimony or other material evidence despite diligent efforts; or another significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. (See Cal. Rules of Court, rule 3.1332(c).) OAH considers all relevant facts and circumstances, including the proximity of the hearing date; previous continuances or delays; the length of continuance requested; the availability of other means to address the problem giving rise to the request; prejudice to a party or witness as a result of a continuance; the impact of granting a continuance on other pending hearings; whether trial counsel is engaged in another trial; whether the parties have stipulated to a continuance; whether the interests of justice are served by the continuance; and any other relevant fact or circumstance. (See Cal. Rules of Court, rule 3.1332(d).)

Student's informal request for continuance does not establish good cause for a continuance, and does not indicate that Student has conferred with District's counsel on mutually agreeable future dates. Student may file a motion to continue after conferring with the District, or a joint request for continuance with the District, specifying proposed dates and a basis for good cause for a continuance. The parties may request that OAH choose dates if they cannot mutually agree on future dates.

ORDER

1. The District's motion to consolidate is granted. OAH case number 2013080179 (First Case) is designated as the primary case, and all documents shall be filed under that case number.
2. All dates previously set in OAH case number 2013120529 (Second Case) are vacated.
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 2013080179 (First Case).
4. Student's request for a continuance is denied.
5. All dates previously set in OAH case number 2013080179 (First Case) are confirmed.

Dated: December 18, 2013

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings