

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

WHITTIER UNION HIGH SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2014120995

ORDER GRANTING MOTION TO
CONSOLIDATE AND GRANTING
MOTION TO CONTINUE AND
SETTING DATES; NOTICE
CONCERNING AGREEMENT TO USE
MEDIATION IN LIEU OF
RESOLUTION SESSION

On December 19, 2014, Student filed a request for due process hearing (complaint) in OAH Case No. 2015010128, naming Whittier Union High School District.

On December 23, 2014, Whittier Union filed a complaint in OAH case number 201410995, naming Student.

On January 5, 2015, the parties filed a joint stipulation to consolidate the cases, a joint request for dates, and a waiver of the resolution session meeting.

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 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].)

Student raises claims spanning the two-year statute of limitations, beginning with the January 22, 2013 amendment to his individualized education program, through the November 12, 2014 IEP. District seeks a determination that the November 12, 2014 IEP offered Student a free appropriate public education in the least restrictive environment.

Each case raises claims about the November 12, 2014 IEP. As argued by the parties, adjudication of the issues will involve the same evidence and witnesses, at least as to this IEP. Student's case involves additional claims for two years prior. Weighing all the relevant

factors, the commonality of factual and legal claims concerning the November 2014 IEP and the interests of judicial efficiency and economy, these cases shall be consolidated. The time lines in Student's case shall govern.

Request for 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).)

The parties requested a continuance of the scheduled dates, which are currently in late January and early February 2015. They requested that the mediation be held on February 4, 2015, the prehearing conference on March 16, 2015, and the hearing on March 30 and 31 and April 1 and 2, 2015. This is the first request for a continuance and is granted. The request for a specific mediation date is granted. Due to operational needs, the request for specific dates for a prehearing conference and hearing is denied.

Agreement to Waive the Resolution Session

A school district must convene a meeting to discuss the issues raised in a due process complaint in order to attempt to resolve the dispute. (34 C.F.R. § 300.510 (a)(1), (2).) This meeting is commonly known as a resolution session. A resolution session need not be held if the parent and school district agree in writing to waive it (*Id.* at § 300.510(a)(3)(i)) or if the parent and school district agree to use mediation instead of a resolution session (*Id.* at § 300.510 (a)(3)(ii)). If the parties agree to waive the resolution session, the 45-day timeline for a due process hearing begins the day after the waiver. (*Id.* at § 300.510(c)(1).) However, the timeline does not change if the parties agree to use mediation instead of a resolution session. (*Id.* at § 300.510(c).)

When the parties agree in writing to waive a resolution session, OAH will move forward the dates for mediation, prehearing conference, and hearing to accommodate the beginning of the 45-day timeline for hearing. In this case, on January 5, 2015, the parties agreed in writing to waive a resolution session. This starts the 45-day time line for decision, making the decision due no later than February 19, 2015. However, the parties requested that the hearing not begin until March 30, 2015, well beyond the time line resulting from a waiver of the resolution session. The only conclusion to be reached is that, in spite of the language

of the stipulation, the parties did not intend to waive the resolution session. Accordingly, it is determined the parties intended to use mediation instead of a resolution session.

ORDER

1. The parties' joint request to consolidate the cases is granted.
2. The 45-day timeline to issue a decision in the consolidated cases shall be based on the date of the filing of the complaint in Student's case, OAH Case Number 2015010128.
3. The joint request to continue the dates in this case is granted. All dates are vacated.
4. The mediation and hearing shall take place at the offices of the Whittier Area Cooperative Special Education Program, Legal Division, 8036 S. Ocean View Avenue, Whittier, CA 90602. The prehearing conference shall be conducted by telephone. The consolidated case is scheduled as follows:

Mediation	February 19, 2015, at 9:30 a.m.
Prehearing Conference	March 27, 2014, at 3:00 p.m.
Hearing	April 7 to 9, 2014, at 9:30 a.m. first day, 9:00 a.m. other days, and continuing day to day, as necessary and ordered by the Administrative Law Judge

DATE: January 7, 2015

/s/

JUDITH A. KOPEC
Division Presiding Administrative Law Judge
Office of Administrative Hearings