

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TORRANCE UNIFIED SCHOOL
DISTRICT.

OAH Case No.: 2014100003

ORDER DENYING MOTION TO
CONSOLIDATE AND DENYING
MOTION TO CONTINUE

On September 29, 2014, Student filed a Request for Due Process Hearing in OAH Case Number 2014100003 (First Case), naming Torrance Unified School District.

On February 2, 2015, District filed a Request for Due Process Hearing in OAH Case Number 2015020192 (Second Case), naming Student.

On February 4, 2015, District filed a Motion to Consolidate the First Case with the Second Case and to continue the due process hearing dates set in both cases to specified dates in mid-May 2015. On February 5, 2014, Student filed a non-opposition to the motion. The ALJ heard argument on the motion at the prehearing conference held in the First Case on February 9, 2015, and denied the motion, as further described below.

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, such as 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].)

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 First Case and Second Case involve the same parties, and a common question of law or fact, specifically, whether the March 14, 2014, individualized education

program, as amended by the July 2, 2014, IEP, provided Student a free appropriate public education. However, at the oral argument on the motion during the PHC in the First Case, the parties conditioned the motion for consolidation on the granting of a continuance in both cases as requested in the motion. As a result, for the reasons set forth below, consolidation would not further the interests of justice or judicial economy.

The request for continuance is not supported by good cause. The First Case was filed on September 29, 2014, and OAH set a hearing date of November 25, 2014. By Order dated November 13, 2014, issued in response to a joint request for a continuance, the hearing date in the First Case was continued to February 17 through 19, 2015, which were dates selected by the parties. District did not file the Second Case until February 4, 2015, approximately two weeks before the First Case was scheduled to be heard. This motion was filed two days after the Second Case was filed. The parties demonstrated no justification for District's lengthy delay in filing the Second Case over four months after the First Case was filed, and nearly three months after the hearing on the First Case was continued, at the parties' request, to dates chosen by the parties. No party established good cause as to why either the First Case or the Second Case required the continuance that the motion expressly requested. In particular, no party demonstrated good cause to continue the First Case for any period of time, let alone the three-month long continuance requested in the motion. Indeed, the sequence of events suggests that District intentionally delayed in filing the Second Case so as to attempt to obtain a second continuance of the First Case by way of this motion. Consequently, consolidation would not be appropriate under the conditions set by the parties at the PHC, namely, consolidation and continuance of both matters. Granting the motion to consolidate and continue under these circumstances would be contrary to law, would not further the interests of judicial economy, and would not promote the policy, intended for the benefit of the child involved, of expeditiously resolving special education cases. Rather, granting the motion would delay resolution of the First Matter for an undue length of time, and could serve to encourage tactics by the parties to obtain lengthy continuances of special education due process hearing cases.

ORDER

District's Motion to Consolidate and Continue is DENIED. All dates previously set for hearing in the First Case and the Second Case shall remain as scheduled.

DATE: February 12, 2015

/s/

ELSA H. JONES
Administrative Law Judge
Office of Administrative Hearings