

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

SWEETWATER UNION HIGH SCHOOL
DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT,

PARENTS ON BEHALF OF STUDENT,

v.

SWEETWATER UNION HIGH SCHOOL
DISTRICT.

OAH Case No. 2014110577 (Primary Case)

OAH Case No. 2015010696 (Secondary
Case)

ORDER FOLLOWING PRE-HEARING
CONFERENCE OF MARCH 9, 2015;
ORDER GRANTING MOTION TO
CONSOLIDATE AND GRANTING
MOTION TO CONTINUE

On March 9, 2015, Administrative Law Judge Darrell Lepkowsky, Office of Administrative Hearings, held a telephonic prehearing conference in this matter. Attorney Justin Shinnfield appeared on behalf of the Sweetwater Union High School District. Attorney Seth Schwartz appeared on behalf of Student. The ALJ recorded the PHC.

Based on discussion of the parties, the ALJ issues the following order:

Student's Motion to Consolidate:

The Sweetwater Union High School District filed a Request for Due Process Hearing on November 14, 2014, in OAH Case No. 2014110577 (District's Case) naming Student. Sweetwater Union seeks a ruling that its assessments of Student were valid such that Sweetwater Union is not obligated to fund independent educational assessments Student has requested.

Student filed a Request for Due Process Hearing on January 20, 2015, naming Sweetwater Union. Student raises one issue: whether Sweetwater Union failed to assess him in all areas of suspected disability.

On March 2, 2015, Student filed a motion to consolidate his case with the one filed by Sweetwater Union. Student also filed a motion to continue the consolidated cases until an unspecified date in April 2015. On March 6, 2015, Sweetwater Union filed a notice of non-opposition to Student's motions.

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, Sweetwater Union's case and Student's case involve the assessments conducted by Sweetwater Union. The cases are interrelated. Consolidation therefore furthers the interest of judicial economy by avoiding two hearings on similar issues that will involve many of the same witnesses and evidence. Student's motion to consolidate is granted.

Student's Motion 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).)

This is the first continuance Student has requested. Sweetwater Union does not oppose the request. Therefore, good cause appearing, Student's motion for continuance is granted. The hearing shall now take place as follows:

TELEPHONIC PREHEARING CONFERENCE: April 6, at 3:00 p.m.

DUE PROCESS HEARING: APRIL 13 -16, 2015, starting at 1:30 p.m. on April 13, 2015, and 9:00 a.m. all other days, unless otherwise ordered.

The hearing shall take place at Sweetwater Union's offices located at **670 L Street, Suite A, Chula Vista, CA 91911.**¹

The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure that the witnesses will be available to testify.

¹ At a minimum, the hearing room shall have four or more separate tables capable of being moved into a courtroom configuration with an electrical outlet near the ALJ's table. Sweetwater Union shall ensure that all parties, witnesses, and the ALJ have drinking water and tissue available to them, and that the hearing room and other facilities that will be used during the hearing are accessible in compliance with the Americans with Disabilities Act.

A witness will not be regarded as unavailable for purposes of showing “good cause” to continue the hearing if the witness is not properly notified of the hearing date or properly subpoenaed, as applicable.

Issues for Hearing. The parties clarified the issues for hearing as follows:

Sweetwater Union’s Issue: Did Sweetwater Union appropriately assess Student in all areas of disability such that it is not required to fund the independent psycho-educational evaluation requested by Student?

Student’s Issue: Did Sweetwater Union fail to contact neuro-psychological and occupational therapy assessments of Student although he had suspected needs in those areas?

As proposed remedies, Student requests that Sweetwater Union be ordered to fund at public expense independent assessments in the areas of psycho-educational, neuropsychological, and occupational therapy.

Order of Presentation of Evidence. This matter is consolidated, and involves two parties. The order of presentation of evidence shall be as follows: Sweetwater Union shall present its case-in-chief first, followed by Student. Where Student and Sweetwater Union intend to call the same person to testify, each party will examine the witness immediately after the other party, so the witness will only need to be called to the witness stand once. After the first direct and cross-examinations, each party shall be limited in examining the witness to only those matters raised in the immediately preceding examination. Only one round of redirect and/or re-cross examination will be permitted, unless otherwise ordered.

Settlement. The parties are encouraged to continue working together to reach an agreement before the due process hearing. The parties shall inform OAH in writing immediately should they reach a settlement or otherwise resolve the dispute before the scheduled hearing. In addition, if a settlement is reached within five days of the scheduled start of the due process hearing, the parties shall also inform OAH of the settlement by telephone at (916) 263-0880.

IF A FULL AND FINAL WRITTEN SETTLEMENT AGREEMENT IS REACHED AFTER 5:00 P.M. THE DAY PRIOR TO HEARING, THE PARTIES SHALL LEAVE A VOICEMAIL MESSAGE REGARDING THE SETTLEMENT AT (916) 274-6035. THE PARTIES SHOULD ALSO LEAVE CONTACT INFORMATION SUCH AS CELLULAR PHONE NUMBERS OF EACH PARTY OR COUNSEL FOR EACH PARTY. THE PARTIES SHOULD SIMULTANEOUSLY FAX THE SIGNATURE PAGE OF THE SIGNED AGREEMENT OR A LETTER WITHDRAWING THE CASE TO THE OAH AT THE FAXINATION LINE at 916-376-6319.

Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received by OAH. If an agreement in principle is reached, the parties should plan to attend the scheduled hearing unless different arrangements have

been agreed upon by the assigned ALJ. The assigned ALJ will check for messages the evening prior to the hearing or the morning of the hearing.

ORDER

1. Student's Motion to Consolidate is granted.
2. All dates previously set in OAH Case Numbers 2015010696 (Student's case) and 2014110577 (Sweetwater Union's case) are vacated
3. Student's Motion to Continue is granted, with dates continued as follows for the consolidated matter:

TELEPHONIC PREHEARING CONFERENCE: April 6, at 3:00 p.m.

DUE PROCESS HEARING: APRIL 13 -16, 2015, starting at 1:30 p.m. on April 13, 2015, and 9:00 a.m. all other days, unless otherwise ordered.

4. 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 2014110577 [Sweetwater Union's Case].

DATE: March 9, 2015

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings