

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:	
PARENTS ON BEHALF OF STUDENT,	OAH Case No. 2016050446
v.	(Primary)
PARENTS ON BEHALF OF STUDENT,	
PARENTS ON BEHALF OF STUDENT ,	OAH Case No. 2016040085
v.	ORDER FOLLOWING PREHEARING
TUSTIN UNIFIED SCHOOL DISTRICT .	CONFERENCE, CONSOLIDATION
	AND CONTINUANCE OF
	CONSOLIDATED MATTER.

On May 16 2016, a telephonic prehearing conference was held before Administrative Law Judge Judith L. Pasewark, Office of Administrative Hearings. Phillip W. VanAllsburg, Attorney at Law, appeared on behalf of Student. Courtney Brady, Attorney at Law, appeared on behalf of Tustin Unified School District. The PHC was recorded.

Based upon discussion with the parties, the ALJ issues the following order:

1. Consolidation: Pursuant to an oral stipulation during the PHC, the parties requested consolidation of Student's complaint in OAH Case No. 2016040085 and District's complaint in OAH Case No. 2016050446.

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, Student's case and District's case involve a common question of law or fact, specifically, the validity of District's assessments. In addition, consolidation furthers the

interests of judicial economy because both cases involve the same witnesses and exhibits. Accordingly, consolidation is granted.

2. Request for Continuance: Pursuant to an oral stipulation during the PHC, request of the parties during the PHC, the parties requested a continuance of the consolidated complaints in OAH Case No. 2016040085 and OAH Case No. 216050446.

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 joint motion to continue the hearing demonstrates good cause for a continuance, by the consolidation of the two matters. This is the first request for continuance on each matter, and will allow for completion of the mediation process on both cases.

- i. The joint request to Consolidate is granted.
- ii. All dates previously set in Student's case OAH Case No. 2016040085 and District's case OAH Case No. 2016050446 are vacated;
- iii. The joint request to Continue the consolidated matters is granted.
 - a. The Mediation in the above-captioned case shall be held on May 24, 2016, at 9:30 a.m.;
 - b. The Prehearing Conference in the consolidated cases shall be held on August 29, 2016, at 1:00 p.m.; and
 - c. The Due Process hearing in the consolidated cases shall be held on September 6, 7, 8, 2016, with the first day at 1:30 p.m., and all days at 9:30 a.m., and continue day to day, Monday through Thursday, as needed at the discretion of the ALJ.
- iv. 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 District's case, OAH Case No. 2016050446.

3. As ordered in the scheduling order, the named local educational agency was to provide a facility for the hearing that fully complies with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.), the Unruh Civil Rights Act (Civ. Code, § 51 et seq.), and all laws governing accessibility of government facilities to persons with disabilities. The named local educational agency failed to certify that it would provide a facility for this case that complied with the law. The local educational agency shall inform OAH within two days of the date of this order it is able to certify that it will provide a facility that complies with the law.

4. 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.

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.

DATE: May 18, 2016

DocuSigned by:
Judith Pasewark
D4B56EDF1903485

JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings