BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. VISALIA UNIFIED SCHOOL DISTRICT,	OAH Case No. 2015031267
VISALIA UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2014110948 ORDER GRANTING MOTION TO CONSOLIDATE, VACATING HEARING DATES, AND DENYING MOTION TO CONTINUE THE DUE PROCESS HEARING

On November 20, 2014, Visalia Unified School District (Visalia) filed a Request for Due Process Hearing (complaint) in OAH Case Number 2014110948, (first case), naming Student.

On March 27, 2015, Student filed his own complaint in OAH Case Number 2015031267 (second case), naming Visalia. On March 27, 2015, Student also filed a Motion to Consolidate the first case with the second case, and a Motion to Continue the due process hearing dates set in the first case.

On March 30, 2015, Visalia filed an opposition to consolidation on the ground that granting consolidation would delay the start of the due process hearing in the first case that is set to begin April 8, 2015. Student filed a reply to the opposition on the same date.

APPLICABLE LAW

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].)

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).)

DISCUSSION

Consolidation

The first case and second case involve a common question of law and fact, specifically, whether Visalia offered Student a free appropriate public education for the 2014-2015 school year. Student's case adds allegations pertaining to an alleged denial of a FAPE for the 2013-2014 school year, and 2012-2013 school year (beginning March 28, 2013). It is anticipated that much of the same documentary evidence, and witness testimony will be produced by the parties concerning the offer for the 2014-2015 school year. Because there are common questions of law and fact, and because consolidation furthers the interests of judicial economy, and since much of the same evidence will be introduced at hearing, consolidation is granted. The second case is the primary case and all dates in the first case are vacated. The case will proceed on the dates set in the second case.

Continuance

Student also seeks to continue the due process hearing in the first case, currently scheduled for April 8, 9, 13, and 14, 2015. This motion is moot because the dates in the first case have been vacated and the case is proceeding on the dates set in the second case.

In regards to the argument of Visalia's attorney concerning his prospective move from California, it should be noted that dates in May 2015 would not interfere with his prospective move from California during the summer of 2015. Further, he works for a large law firm with other attorneys trained to try special education due process matters, and one of those attorneys should be able to take over the case if necessary.

ORDER

1. Student's Motion to Consolidate is granted.
2. All dates previously set in the first case are vacated.

3. Student's Motion to Continue is denied
4. The matters will proceed on the dates currently scheduled in the second case. The mediation shall be held on May 5, 2015 at 9:30 a.m.; the prehearing conference in the consolidated cases shall be held on May 15, 2015; and the due process hearing in the consolidated cases shall be held on May 21, 2015, 9:30 a.m. on the first day, and continuing day-to-day, Monday through Thursday at the discretion of the assigned ALJ.
5. 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 the second case.

DATE: April 1, 2015

/s/

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings