BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: MILLBRAE SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2013030202
PARENT ON BEHALF OF STUDENT, v. MILLBRAE SCHOOL DISTRICT.	OAH CASE NO. 2013040163 ORDER GRANTING MOTION TO CONSOLIDATE

On March 6, 2013, the Millbrae School District (District) filed with the Office of Administrative Hearings (OAH) a Request for Due Process Hearing (complaint) in OAH case number 2013030202 (First Case). On March 25, 2013, OAH granted the District's motion to amend and deemed its first amended complaint filed on that date. On April 2, 2013, OAH granted the parties' joint request for a continuance, and the First Case is currently scheduled for hearing on May 29, 2013, with a prehearing conference (PHC) on May 22, 2013, and mediation on April 25, 2013.

On April 2, 2013, Student filed a Request for Due Process Hearing in OAH case number 2013040163 (Second Case), naming the District. On April 4, 2013, OAH issued a Scheduling Order for the Second Case setting mediation for May 8, 2013, the PHC for May 20, 2013, and the due process hearing for May 29, 2013.

On April 9, 2013, Student filed a Motion to Consolidate the First Case with the Second Case. On April 10, 2013, the District filed a non-opposition to Student's motion.

APPLICABLE LAW

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].)

DISCUSSION

Here, the First Case and the Second Case involve common questions of law and fact, specifically, whether the District's individualized education programs (IEP's) of November and December 2012 and February 2013 offered Student a free appropriate public education (FAPE), as well as the appropriateness of the District's prior assessments and whether Student is entitled to an independent educational evaluation (IEE). The District's amended complaint alleges that the November and December 2012 and February 2013 IEP's offer Student a FAPE and seeks an order that it may implement these IEP's without parental consent. The District also alleges that it conducted an appropriate psycho-educational assessment of Student in November of 2012 such that Student is not entitled to an IEE. Student alleges multiple procedural violations related to the 2012 and 2013 IEP's and that the District failed to timely and appropriately request a hearing to prove the appropriateness of both its psycho-educational and academic assessments. Student seeks reimbursement for a private assessment as well as continued placement at Arbor Bay School, a non-public school, and related services. The District's and Student's complaint raise similar and overlapping issues such that consolidation will prevent the risk of inconsistent rulings.

In addition, consolidation furthers the interests of judicial economy because both cases involve the same parties and many of the same witnesses would be required to testify in each proceeding. Each matter will also involve the introduction of the same or similar documents including relevant IEP's and assessment reports. Accordingly, consolidation is granted.

When consolidating cases, OAH designates the statutory timelines applicable to the consolidated matters to be controlled by one of the cases. Here, the statutory timelines shall be controlled by the First Case.[1]

ORDER

1. Student's Motion to Consolidate is granted.
2. All dates previously set in OAH Case Number 2013040163, the Second Case, are vacated.

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[1] The designation of the District filed case (First Case) as the lead case does not relieve the parties of their obligation to participate in a resolution session as to the Student filed complaint. There is sufficient time for the parties to conduct, or to agree to waive, the resolution session. (20 U.S.C § 1415(f)(1)(B)(i)(I).)

3. The consolidated cases shall now be heard on the dates currently set for the First Case. Namely, mediation for the consolidated cases shall be held on April 25, 2013 at 9:30 a.m., with a PHC on May 22, 2013 at 10:00 a.m., and the due process hearing shall be held on May 29, 2013, commencing at 9:30 a.m., and continuing day-to-day, Monday through Thursday, as needed and at the discretion of the Administrative Law Judge.
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 2013030202, the First Case.

Dated: April 11, 2013

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings