

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT on behalf of STUDENT,

vs.

MORGAN HILL UNIFIED SCHOOL
DISTRICT,

OAH CASE NO. 2009100528

PARENT on behalf of STUDENT,

vs.

MORGAN HILL UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2009040473

ORDER GRANTING MOTION TO
CONSOLIDATE

On April 7, 2009, Student filed a Request for Due Process Hearing, naming Morgan Hill Unified School District (District) as the respondent (Student's First Complaint). This matter was designated as OAH Case No. 2009040473. On April 14, 2009, OAH issued a Scheduling Order and Notice of Due Process Hearing and Mediation in Student's First Complaint. Initially, the Due Process Hearing was set for June 1, 2009. Pursuant to various joint continuance requests, on September 28, 2009 OAH issued an Order continuing the hearing to December 1, 2009 through December 3, 2009, at 9:00 a.m.

On October 8, 2009, Student filed a Request for Due Process Hearing, naming District as the respondent (Student's Second Complaint). This matter was designated as OAH Case No. 2009100528. On October 8, 2009, Student also filed a Motion to Consolidate OAH Case No. 2009040473 with OAH Case No. 2009100528 (Motion).

On October 15, 2009, OAH issued a Scheduling Order and Notice of Due Process Hearing and Mediation in Student's Second Complaint. The Mediation was set for November 12, 2009, the Prehearing Conference was set for December 2, 2009 and the Due Process Hearing was set for December 9, 2009.

District has not responded to the Motion.

DISCUSSION

OAH will generally consolidate matters that involve a common question of law and/or fact and that involve the same parties, and when consolidation of the matters furthers the interests of judicial economy and will obviate potentially inconsistent rulings. While no statute or regulation specifically provides a standard to be applied in deciding a motion to consolidate special education cases, California statutes offer, by analogy, a standard appropriate to special education cases. Government Code section 11507.3, subdivision (a), provides that an administrative law judge “may” order pending administrative proceedings consolidated if they involve “a common question of law or fact . . .” California Code of Civil Procedure section 1048, subdivision (a), applies the same standard to the consolidation of civil cases.

The above-titled cases generally involve common questions of law or fact. District has not opposed the Motion to Consolidate. In addition, consolidation furthers the interest of judicial economy. Here both of Student’s cases involve the same Student and the same evidence concerning Student’s assessments, the IEP team’s offer of placement and services for the 2008-2009 and the 2009-2010 school years, and remedies. Many of the same witnesses would be called to testify in both cases. Thus, consolidation is appropriate since both cases have significant common questions of law and fact.

ORDERS

1. Student’s Motion to Consolidate is granted, and the above-titled cases are consolidated.
2. All dates previously set for proceedings in OAH Case No. 2009040473, shall remain for the consolidated cases as scheduled: the Mediation on November 4, 2009; the Pre-hearing Conference on November 23, 2009, at 1:30 p.m.; and the Due Process Hearing on December 1, 2009 through December 3, 2009.
3. 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 No. 2009100528. All other prehearing and hearing dates set under OAH Case No. 2009100528 are vacated.

Dated: October 22, 2009.

/s/

CLARA SLIFKIN
Administrative Law Judge
Office of Administrative Hearings

