

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT on behalf of STUDENT, v. LA MESA-SPRING VALLEY SCHOOL DISTRICT,	OAH CASE NO. 2010020497
LA MESA-SPRING VALLEY SCHOOL DISTRICT, v. PARENT on behalf of STUDENT.	OAH CASE NO. 2010020059 ORDER GRANTING MOTION TO CONSOLIDATE IN PART

On February 1, 2010, La Mesa – Spring Valley School District (District) filed a request for due process hearing naming Student as the respondent in OAH case number 2010020059 (District Case). The District Case raised two issues: 1) Whether a November 20, 2009 psychoeducational assessment was appropriate; and 2) whether a January 4, 2010 occupational therapy assessment was appropriate.

On February 1, 2010, San Diego County Mental Health Services (CMH) filed a due process hearing request naming Student as the respondent in OAH case number 2010020075 (CMH Case). CMH raised one issue: Whether CMH could complete its AB3632 assessment of Student without parental consent.

On February 11, 2010, Student filed a due process hearing request naming District as the respondent in OAH case number 2010020497 (Student Case). Student raised the following issues: 1) Whether Student was denied a FAPE because District failed to assess her in all areas of suspected disability, specifically, psychoeducational, occupational therapy, and orientation and mobility; 2) Whether Student was denied a FAPE because the District failed to provide transportation, an emergency health plan, a behavior support plan and one-to-one assistance; and 3) Whether Student was denied a FAPE because she was not placed in a non-public school.

On February 11, 2010 Student filed a motion to consolidate the Student Case with the District Case and the CMH Case. On February 19, 2010, District opposed consolidation on

the ground that consolidation would not further judicial economy. No opposition was received from CMH. For the reasons set forth below, the District Case and Student Case will be consolidated. However, consolidation of the CMH Case with the Student Case is not warranted.

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, the District Case and the Student Case substantially overlap on the issue of whether the psychoeducational assessment and occupational therapy assessments were appropriate. Student contends in the Student Case that she was not appropriately assessed and District contends in the District Case that Student was. Given the substantial overlap of issues and facts required to be proven at hearing, consolidation of these cases is warranted.

However, as to the CMH Case, consolidation is not warranted. CMH is not named in the Student Case, nor does Student make any allegations about the appropriateness of the AB 3632 assessment that is the subject of the CMH Case. Because the CMH Case presents a discrete issue that is unrelated to the allegations in the District Case or Student Case, consolidation is not warranted.

ORDER

1. Student's Motion to Consolidate OAH Case Numbers 2010020059 (District Case) and 2010020497 (Student Case) is granted.
2. All dates previously set in OAH Case Number 2010020059 are vacated. The consolidated matters shall proceed under the dates set in OAH Case Number 2010020497. 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 2010020497 (Student Case).
3. Student's Motion to Consolidate OAH Case Numbers 2010020497 (Student's Case) and 2010020075 (CMH Case) is denied. All dates in OAH Case Number 2010020075 remain on calendar.

Dated: February 25, 2010

/s/

RICHARD T. BREEN
Administrative Law Judge
Office of Administrative Hearings