

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENTS ON BEHALF OF STUDENT, v. IRVINE UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2012030279
IRVINE UNIFIED SCHOOL DISTRICT, v. PARENTS ON BEHALF OF STUDENT.	OAH CASE NO. 2011100415 ORDER GRANTING MOTION TO CONSOLIDATE AND DENYING MOTION TO RETAIN EARLIER HEARING DATES

On October 11, 2011, the Irvine Unified School District (District) filed a request for due process (complaint) in Office of Administrative Hearings (OAH) case number 2011100415 naming Student (First Case). The District's complaint seeks a ruling that its triennial assessment of Student was appropriate and that it therefore is not required to fund an independent educational assessment for him.

Student and the District filed a joint request for continuance in the First Case on January 20, 2012, in which they state that Student intended to file his own case by January 27, 2012, and that the District would not object to consolidation of its case with that of Student. The parties requested that the hearing then set in the First Case be continued to April 24-26, 2012. OAH granted the parties' motion.

Student did not file his complaint until March 6, 2012 (Second Case). OAH has assigned case number 2012030279 to Student's case. Student's complaint alleges that the District has procedurally and substantively denied Student a free appropriate public education from March 6, 2010, to the present. Student's complaint also alleges that the District has improperly failed to provide him an independent educational evaluation as requested by his parents. Simultaneous with the filing of his complaint, Student filed a motion to consolidate his case with the District's. He requests that the consolidated matter be set for hearing on the dates presently set in the First Case. Student also requests that OAH set a mediation in the consolidated matter, but does not propose a date for that mediation.

The District has not filed an opposition to Student's motion to consolidate, or otherwise responded to it.

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].)

Here, the First Case and Second Case involve at least one common question of law or fact, specifically, whether the District must fund an independent educational evaluation for Student. It also appears that many of the witnesses that would be called in the District's case would also be called in Student's case. The District indicated in the parties' January 20, 2012 motion for continuance that it would not oppose consolidation of the cases and has not filed any opposition to Student's motion.

Based upon the District's lack of opposition and the fact that consolidation furthers the interests of judicial economy because there are overlapping issues and witnesses in both cases, Student's motion to consolidate is granted. However, Student's motion to retain the prehearing conference and due process hearing dates presently set for the First Case is denied. The dates for this consolidated matter shall be those presently set for the Second Case, as detailed in the Scheduling Order issued by OAH on March 9, 2012.

ORDER

1. Student's Motion to Consolidate is granted.
2. All dates previously set in OAH Case Number 2011100415 [First Case] are vacated.
3. The dates presently set in the Second Case shall be retained for this consolidated matter: Mediation in the consolidated matter shall take place on April 12, 2012, starting at 9:30 a.m.; the prehearing conference in the consolidated matter shall be held on April 25, 2012, at 1:30 p.m., and the due process hearing in the consolidated matter shall be held beginning on May 1, 2012, beginning at 9:30 a.m. on the first day of hearing, and from day to day thereafter, beginning at 9:00 a.m., unless otherwise ordered. The parties shall discuss with the Administrative Law Judge assigned to the prehearing conference how many total days they believe they will need to litigate the consolidated cases.

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 2012030279 [Second Case].

Dated: March 16, 2012

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings