

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

TORRANCE UNIFIED SCHOOL  
DISTRICT,

v.

PARENT(S) ON BEHALF OF STUDENT.

OAH CASE NO. 2012070302

In the Matter of:

PARENT(S) ON BEHALF OF STUDENT,

v.

TORRANCE UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2012100669

ORDER DENYING MOTION TO  
CONSOLIDATE

On July 10, 2012, Torrance Unified School District (District) filed a Request for Due Process (complaint), in Office of Administrative Hearings (OAH) case number 2012070302, (District's complaint), naming Parent on behalf of Student (Student). District's complaint was filed in response to Parent's disagreement with District's 2012 triennial assessments in the areas of psychoeducational, occupational therapy, speech and language, and special circumstance instructional assistance, and written request for independent educational evaluations at public expense (IEE's). District's complaint requests a decision confirming the appropriateness of its 2012 triennial assessments.

On July 25, 2012, OAH continued District's complaint, based upon a joint motion of the parties and good cause, including, Parent's stated intent to retain counsel and consider filing a due process hearing request. In their joint motion, the parties stipulated to continued dates. Based upon the parties stipulation, OAH continued the prehearing conference (PHC) to Monday, October 29, 2012, and the due process hearing to November 5 through 8, 2012.

On October 18, 2012, Student filed a complaint in OAH case number 2012100669 (Student's complaint), naming District. Student's complaint contains eleven issues, spanning the 2010-2011, and 2011-2012, and 2012-2013 school years. Student alleges that for each of

the mentioned academic years District denied Student a free and appropriate public education (FAPE) by failing to offer Student: an academic aide exclusively dedicated to Student; and a placement in the least restrictive environment, (LRE), more particularly, a general education classroom for no less than 70 percent of the school day. Student also alleged that during the 2010-2011 and 2011-2012 school years, District denied Student a FAPE by failing to offer extended school year (ESY). As to particular school years, Student alleged that District denied Student a FAPE; during the 2011-2012 school year, by failing to take appropriate action to protect Student from being bullied; during the 2011-2012 school year by failing to respond to Parent's request for a visual processing assessment at the May 2012 IEP team meeting; and during the 2012-2013 school year, by failing to implement the agreement at the June 2012 IEP team meeting to provide a communications log.

On October 18, 2012, concurrently with Student's complaint, Student filed a Motion to Consolidate District's complaint with Student's complaint. Student claimed that judicial economy would be best served by consolidating the action on the grounds that the evidence required for both cases would be similar, that both cases involve the identical IEP meeting, and consolidation would avoid conflicting judicial opinions and remedies.

On October 19, 2012, District filed its opposition to Student's Motion to Consolidate. District maintained that the motion is premature as District's time to object to the sufficiency of Student's complaint had not expired such that Student's complaint was not yet deemed sufficient for hearing. (Ed. Code § 56502(c)(2).) District also maintained the judicial resources would not be conserved as the District's complaint, unlike the Student's complaint, is restricted to the appropriateness of its 2012 triennial assessments, and, not IEP's from 2010 through 2012.

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, although many of the same witnesses may testify, common questions of law are not involved, and consolidation would not further the interests of judicial economy.

District's complaint was filed pursuant to its specific statutory obligation to do so when Parent disagreed with assessments and requested IEE's. School districts also are obligated to fund independent educational evaluations (IEE's) at their expense under specified circumstances. An IEE is an evaluation conducted by a qualified examiner not employed by the school district. (34 C.F.R. § 300.502(a)(3)(i).) A parent has the right to request an IEE at public expense if the parent disagrees with an evaluation obtained by the school district. (34 C.F.R. § 300.502(b)(1) ; Ed. Code, § 56329, subd. (b).) When a parent requests an IEE at public expense, the school district must, "without unnecessary delay,"

either initiate a due process hearing to show that its evaluation is appropriate, or provide the IEE at public expense, unless the school demonstrates at a due process hearing that the evaluation obtained by the parent does not meet its criteria. (34 C.F.R. §300.502(b)(4); Ed. Code, § 56329, subd. (c).) If the public agency files a due process complaint notice to request a hearing, and the final decision is that the agency's evaluation was appropriate, the parent still has the right to an IEE, but not at public expense. (34 C.F.R. § 300.502(b)(3).)

Pursuant to statute, District's complaint is limited to a determination of whether the 2012 triennial assessments were appropriate. Unlike Student's complaint, District's complaint does not address the broader issues of FAPE, arising from any IEP offer, let alone IEP offers spanning several years. As such judicial economy would not be served by consolidating the actions, because District's complaint does not involve issues relating to FAPE offers in any IEP, District's failure to implement the IEP's, or address Student's unique needs, whether by conducting an additional assessment, responding to alleged bullying, or providing ESY services.

For these reasons, Student's Motion to Consolidate is denied.

#### ORDER

1. Student's Motion to Consolidate is denied.
2. All dates previously set for hearing in this matter shall remain as scheduled.

Dated: October 24, 2012

/s/

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EILEEN M. COHN  
Administrative Law Judge  
Office of Administrative Hearings