

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Consolidated Matters of:

AUNT on behalf of STUDENT,

vs.

GARDEN GROVE UNIFIED SCHOOL  
DISTRICT,

OAH CASE NO. 2009040166  
(Primary)

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GARDEN GROVE UNIFIED SCHOOL  
DISTRICT,

vs.

AUNT on behalf of STUDENT.

OAH CASE NO. 2009020458

ORDER GRANTING STUDENT'S  
MOTION TO CONSOLIDATE; AND,  
GRANTING DISTRICT'S MOTION TO  
DISMISS STUDENT'S ISSUE NO. 4

INTRODUCTION

On February 12, 2009, Garden Grove Unified School District (District) filed a Request for Due Process Hearing (District's Complaint), naming Parent on behalf of Student, as the respondent. This matter was designated as OAH Case No. 2009020458.

On March 10, 2009, OAH issued an Order Continuing the Pre-Hearing Conference (PHC) to April 13, 2009 and the Due Process Hearing (DPH) to April 22 and 23, 2009.

On April 2, 2009, Student filed a Request for Due Process Hearing (Student's Complaint), naming District as the respondent. This matter was designated as OAH Case No. 2009040166. Student's Complaint alleged four Issues, including Issue No. 4 regarding "Section 504 and ADA" relief. In his Complaint, Student also requested nine days of DPH (Student's DPH Scheduling Request). On April 7, 2009, OAH issued a Scheduling Order and Notice of Due Process Hearing and Mediation (Scheduling Order), setting the following nine days for DPH: June 2 – 5, 2009, and June 5 – 8, 2009.<sup>1</sup>

On April 2, 2009, Student also filed a Motion to Consolidate Student's case with District's case (Student's Consolidation Motion).

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<sup>1</sup> District filed an opposition to Student's request for nine days of DPH. The Scheduling Order had already been issued. Furthermore, any concerns regarding the appropriateness of Student's DPH time estimate should be addressed at the Pre-Hearing Conference. Any conflicts with scheduled dates can be addressed by a motion for continuance supported by good cause. No such request has been made at this time.

On April 8, 2009, District filed an opposition to Student's Consolidation Motion a Motion to Dismiss Student's Issue No. 4 (District's Motion to Dismiss Section 504 and ADA Claims).<sup>2</sup>

## DISCUSSION

### *Student's Consolidation Motion*

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 District's Complaint and Student's Complaint generally involve common questions of fact and law centering on assessments of Student and the offer or denial of FAPE, except for Student's Section 504 and ADA claims. In addition, consolidation furthers the interests of judicial and party economy because determination of the parties' issues in both cases will involve many of the same witnesses and documents. By consolidating these cases, the witnesses need testify only once, the documents need be introduced only once, and only one decision need be written. Therefore, Student's Consolidation Motion shall be granted.

### *District's Motion to Dismiss Section 504 and ADA Claims*

"Section 504" refers to a claim under the provisions of the 1973 Rehabilitation Act (29 U.S.C. § 794). "ADA" refers to the Americans with Disabilities Act. (42 U.S.C. § 12101, et seq.) The jurisdiction of OAH to hear due process claims under the IDEA is limited. OAH only has jurisdiction to consider a proposal or refusal to initiate or change the identification, assessment, or educational placement of a child, or the provision of a FAPE to a child. OAH also has jurisdiction to consider the refusal of a parent or guardian to consent to an assessment of a child, or a disagreement between a parent or guardian and the district as to the availability of a program appropriate for a child. (Ed. Code, § 56501, subd. (a).) This limited jurisdiction does not include a school district's alleged failure to comply with Section

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<sup>2</sup> Because District's Motion to Dismiss and Opposition to Student's Consolidation Motion were filed after business hours April 7, 2009, they were deemed filed April 8, 2009.

504 or the ADA. Therefore, District's Motion to Dismiss Section 504 and ADA Claims shall be granted.

#### ORDERS

1. Student's Consolidation Motion is granted, and the above-titled cases are consolidated.
2. All dates previously set for proceedings in District's case (OAH Case No. 2009020458) are vacated.
3. All timelines, including the 45-day timeline for issuance of the decision in the consolidated cases shall be based on the date of the filing of Student's Complaint (OAH Case No. 2009040166)
4. The Scheduling Order issued April 7, 2009 is confirmed. The dates are as follows: Mediation: May 7, 2009; Pre-Hearing Conference: May 22, 2009; and, DPH: June 2 – 5, 2009, and June 5 – 8, 2009.
5. District's Motion to Dismiss Section 504 and ADA Claims is granted.

Dated: April 13, 2009

/s/

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STEVEN CHARLES SMITH  
Administrative Law Judge  
Office of Administrative Hearings