

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

TUSTIN UNIFIED SCHOOL DISTRICT,

v.

PARENTS on behalf of STUDENT,

OAH CASE NO. 2009101194

PARENTS on behalf of STUDENT,

v.

TUSTIN UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2010020597

ORDER GRANTING IN PART AND
DENYING IN PART MOTION TO
CONSOLIDATE

On October 20, 2009, the Tustin Unified School District (District) filed a Request for Due Process Hearing (District's complaint) against Student. This matter was designated as OAH Case No. 2009101194.

On January 11, 2010, the Office of Administrative Hearings (OAH) held a Prehearing Conference, which set the dates for hearing regarding the District's complaint for March 2, 3, and 4, 2010. The parties are also scheduled to attend mediation on February 24, 2010.

On February 16, 2010, Student filed a Request for Due Process Hearing (Student's complaint) against the District. This matter was designated as OAH Case No. 2010020597.

On February 18, 2010, OAH issued a Notice of Due Process Hearing, Notice of Mediation, and Prehearing Conference in Student's complaint. This matter is set for mediation on March 30, 2010, Prehearing Conference on April 7, 2010, at 1:30 p.m., and hearing on April 12, 13, 14, 15 and 19, 2010.

On February 16, 2010, Student filed a Motion to Consolidate OAH Case No. 2009101194 with OAH Case No. 2010020597. On February 19, 2010, the District filed an opposition to Student's Motion to Consolidate on the grounds that Student is seeking to delay the hearing on the District's complaint.

DISCUSSION

OAH will generally consolidate matters that involve a common question of law or fact 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 do involve a common question of law or fact regarding the appropriateness of District’s request to assess Student pursuant to its August 13, 2009 assessment plan. However, Student’s complaint contains issues not raised in the District’s complaint: whether the District denied Student a free appropriate public education (FAPE) by failing to implement her individualized educational programs (IEPs) and not ensuring that required IEP team members stayed for the entire IEP meetings.

The parties participated in a Prehearing Conference on January 11, 2010, in which OAH granted Student’s December 30, 2009 request for a continuance because Student recently obtained legal counsel. The parties agreed to the continued hearing dates at the Prehearing Conference. Student’s Motion to Consolidate does not state why Student did not file her complaint sooner after the Prehearing Conference.

The District’s complaint and Issues One through Seven in Student’s complaint will have similar witness and evidence regarding whether the District may assess Student pursuant to the August 13, 2009 assessment plan. However, the issues regarding the District’s assessment request and Issues Eight and Nine in Student’s complaint whether the District denied Student a FAPE will have significantly different testimony and evidence.

Therefore, the District’s complaint and Issues One through Seven in Student’s complaint are ordered consolidated. However, consolidation is not appropriate as to Issues Eight and Nine in Student’s complaint because issues regarding the District’s purported denial FAPE and the assessment plan do not involve common questions of law or fact.

ORDERS

1. Student’s Motion to Consolidate is granted in part, and the District’s complaint and Issues One through Seven in Student’s complaint are consolidated for hearing.
2. All dates previously set for hearing in the District’s complaint shall remain as scheduled to hear the consolidated matter of the District’s complaint and

Issues One through Seven in Student's complaint, with a Prehearing Conference scheduled for 1:30 p.m. on March 1, 2010, with Prehearing Conference statements due on February 25, 2010.

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. 2010020597.
4. Student's Motion to Consolidate is denied in part regarding Issues Eight and Nine in Student's complaint, and these issues shall proceed pursuant to the February 18, 2010 scheduling order.

Dated: February 23, 2010

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings