

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Consolidated Matters of:

LODI UNIFIED SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT,

OAH CASE NO. 2010040769

PARENTS ON BEHALF OF STUDENT,

v.

LODI UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2010060301

ORDER DENYING STUDENT'S  
MOTION TO DISMISS AND  
STUDENT'S MOTION TO  
CONSOLIDATE

On April 14, 2010, the Lodi Unified School District filed a Request for Due Process Hearing (complaint) against Student.

On June 2, 2010, Student filed a Motion to Dismiss, alleging that the Office of Administrative Hearings (OAH) does not have jurisdiction to hear the District's request for an order for an initial assessment of Student. On June 7, 2010, the District filed an opposition.

On June 2, 2010, Student filed a Request for Due Process Hearing against the District, OAH Case No. 2010060301, and a Motion to Consolidate OAH Case No. 2010040769 with OAH Case No. 2010060301. On June 7, 2010, the District filed an opposition to Student's Motion to Consolidate.

APPLICABLE LAW

School districts have the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child" (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a)(1)) or if "[t]he parent or guardian refuses to consent to an assessment of the child. (20 U.S.C. § 1414(a)(1); Ed. Code, § 56501, subd. (a)(3).) OAH has jurisdiction to hear due process claims arising under the Individuals with Disabilities

Education Act (IDEA). (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

Pursuant to Education Code section 56346, subdivision (b):

If the parent of the child fails to respond or refuses to consent to the initiation of services pursuant to subdivision (a), the local educational agency shall not provide special education and related services to the child by utilizing the procedures in Section 1415 of Title 20 of the United States Code or the procedures in subdivision (e) of Section 56506 in order to obtain agreement or a ruling that the services may be provided to the child.

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.

## DISCUSSION

### *Motion to Dismiss*

Student asserts that OAH does not have jurisdiction to hear the District’s complaint because Parents have determined not to request special education services for Student and therefore OAH has no jurisdiction to hear the District’s request for an order to conduct an initial assessment for special education eligibility. The District contends that while recent changes to the IDEA prevent it from requesting a hearing as to Student’s initial eligibility for special education services if Parents refuse consent for services, that the changes do not prevent it from seeking a hearing for an initial assessment for eligibility.

The 2005 amendments to the IDEA explicitly prohibit a local education agency from filing a due process complaint that seeks an order that a student is eligible to receive special education services over the parents’ objections. However, the 2005 amendments and the 2006 implementing regulations do not prohibit the District from filing an action to conduct an initial assessment of Student. In fact, the 2006 regulations provide that a local education agency may request a hearing for the initial assessment if the parents do not provide consent

for the assessment. (34 C.F.R. § 300.300(a)(3)(i) (2006).) Therefore, OAH has jurisdiction to hear the District's complaint, and Student's Motion to Dismiss is denied.<sup>1</sup>

*Motion to Consolidate*

Regarding Student's request to consolidate the two actions, the above-titled cases do not involve common questions of law or fact regarding whether the District is entitled to assess Student for possible eligibility to receive special education services and Student's contention that the District failed to implement Student's educational plan pursuant Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.) and if the District is retaliating against Parents for exercising their rights under the IDEA. In addition, consolidation does not further the interests of judicial economy because both cases will not involve the same witnesses, evidence and questions of law. Therefore, Student's Motion to Consolidate is denied.

**ORDER**

1. Student's Motion to Dismiss is denied.
2. Student's Motion to Consolidate is denied, and the District's case shall proceed to hearing as scheduled on June 14 and 15, 2010.

Dated: June 10, 2010

/s/  
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PETER PAUL CASTILLO  
Administrative Law Judge  
Office of Administrative Hearings

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<sup>1</sup> Nothing in this Order or any subsequent Decision will require Parents to consent for Student to receive special education services.