

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

v.

MONTEREY PENINSULA UNIFIED
SCHOOL DISTRICT,

OAH CASE NO. 2010080151

MONTEREY PENINSULA UNIFIED
SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2010060462

ORDER GRANTING MOTION TO
CONSOLIDATE

On June 11, 2010, District filed a Due Process Hearing Request (District's Complaint) naming Student. This case was designated as Office of Administrative Hearings (OAH) Case Number 2010060462.

On August 4, 2010, Student filed a Request for Due Process Hearing naming District (Student's Case). The case was designated as OAH Case Number 2010080151. Together with his compliant, Student requested the consolidation of his case with District's. District does not oppose Student's request for consolidation.¹

APPLICABLE LAW

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 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); Code of Civ. Proc., § 1048, subd. (a).) The California Code of Civil Procedure, section 1048, subdivision (a), applies the same standard to the consolidation of civil cases.

¹ However, District requests that OAH retains the hearing schedule and dates in its case in order to achieve an expedited hearing of both cases.

A local educational agency (LEA) is required to convene a meeting with the parents and the relevant members of the Individualized Education Program (IEP) team within 15 days of receiving notice of the Student's complaint. (20 U.S.C. § 1415(f)(1)(B)(i)(I); 34 C.F.R. § 300.510(a)(1)(2006).) The purpose of the resolution session is to permit the parents of the child with special needs to discuss their complaint, and permit the school district to resolve the matter. (20 U.S.C. § 1415(f)(1)(B)(i)(IV); 34 C.F.R. § 300.510(a)(2)(2006); Ed. Code, § 56501.5, subd. (a)(4).) The resolution session need not be held if it is waived by both parties in writing or the parties agree to use mediation. (34 C.F.R. § 300.510(a)(3); Ed. Code, § 56501.5.) If the parents do not participate in the resolution session, and it has not been otherwise waived by the parties, a due process hearing shall not take place until a resolution session is held. (34 C.F.R. § 300.510(b)(3).) The school district has 30 days from receipt of the complaint to reach a resolution. (20 U.S.C. § 1415(f)(1)(B)(ii); 34 C.F.R. § 300.510(b)(1)(2006); Ed. Code, § 56501.5, subd. (c).)

DISCUSSION

In its case, District raises two issues involving the appropriateness of the independent educational evaluation conduct by Dr. Jacqueline Cheong, and whether its IEP offer to Student for the 2001-2011 school year constitutes a free appropriate public education (FAPE) for Student in the least restrictive environment. Student's complaint also raises the same issues, among other related issues. The issues raised in both cases involve Student's unique educational needs and whether District's IEP offer provides or denies a FAPE to Student. The two cases involve the same parties, common questions of law, and the same or similar underlying facts. Evaluating and resolving these issues would, most likely, involve the same evidence and witnesses, and the analysis and resolution of the same questions of law.

District does not oppose District's motion to consolidate. Therefore, consolidating these matters will further the interests of judicial economy by saving time or preventing inconsistent rulings.

The District's case is now calendared for hearing on August 23-25, 2010. District argues that the consolidated cases should be heard on that schedule, and that failure to hear the cases in August may prejudice the District because its case involves the approaching school year. District's contention is not without merit. However, when a student requests a due process hearing, that student's parent is entitled to an informal resolution session with the local education agency prior to going to hearing unless the parties agree in writing to waive the resolution session. Here, there is no evidence that parent has agreed to waive his right to a resolution session, and Student is thus entitled to a resolution session prior to a hearing on her case.

While District may be somewhat prejudiced by a delay in the hearing of its case, parent's statutory right to a resolution session in his case would be greatly undermined, if the hearing is held based on the timeline set in District's case, without affording the parent the

opportunity to participate in a resolution session . Further, if the cases remain separate, a decision in the District's case would probably not be filed prior to the hearing in the Student's case.² Therefore, based on all factors, and unless Student agrees to waive her right to a resolution session, the timeline for the hearing and issuance of the decision in the consolidated cases must be based on the Student's case.

ORDER

1. Student's Motion to Consolidate is granted. The above-titled cases are consolidated.
2. All dates previously set in OAH Case No. 2010060462 (District's Case) are vacated.
3. The 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. 2010080151.

Dated: August 13, 2010

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings

² The due process hearing in Student's case is set to begin on September 28, 2010.