

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. TEMPLETON UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2010090174
TEMPLETON UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2010100556 ORDER GRANTING DISTRICT'S MOTION TO CONSOLIDATE

On September 20, 2010, Student filed an Amended Request for Due Process Hearing (complaint) in OAH case number 2010090174 (First Case), naming the Templeton Unified School District (District).

On October 5, 2010, the District filed a complaint in OAH case number 2010100556 (Second Case), naming Student.

On October 19, 2010, the District filed a Motion to Consolidate the First Case with the Second Case. Student has not filed an objection or otherwise responded to the District's motion.

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, the First Case and Second Case involve common questions of law or fact. In his amended complaint, Student disputes whether the District provided him a free appropriate public education (FAPE) between September 20, 2008, and April 27, 2009,

because he alleges the District 1) failed to properly assess him in all areas of suspected disability; and 2) failed to develop individualized education programs that addressed all of Student's needs. Student also contends that the District's response to Student's request for independent educational evaluations (IEEs) was legally compliant with state and federal law. Although not clear, it appears that Student's amended complaint requests IEEs in the areas of behavioral/social emotional and academics as well as an independent functional behavioral assessment (FBA).

The District, in its complaint, asks for a finding from OAH that the assessments it conducted and the assessments conducted by the Fresno Diagnostic Center were legally appropriate and that, therefore, Student is not entitled to any IEEs at public expense. The District also asks for an order that it be permitted to conduct an FBA of Student without his consent. The District contends that Student is not entitled to an independent FBA because Student has never permitted the District to conduct its own FBA. As indicated above, Student has not filed an opposition to the District's motion.

The issues raised by Student in his amended complaint deal in part with prior assessments administered to him and with his contention that those assessments were not appropriate. Those issues are similar to those raised by the District. The hearings will therefore involve similar witnesses and evidence, and will address similar legal and factual issues. Consolidation of the cases furthers the interests of judicial economy. Accordingly, the District's motion to consolidate is granted.

ORDER

1. The District's Motion to Consolidate is granted.
2. All dates previously set in OAH Case Number 2010100556 [Second Case] are vacated.
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 Number 2010090174 [First Case].

4. This matter shall proceed according to the Order dated October 18, 2010, granting the parties joint request for continuance. The Mediation in the above-captioned consolidated cases shall be held on November 4, 2010, at 9:30 a.m. The Prehearing Conference in the consolidated cases shall be held on November 17, 2010, at 10 a.m. The Due Process Hearing in the consolidated cases shall be held on December 7 through December 9, 2010, starting at 9:30 a.m. on the first day of hearing.

Dated: October 27, 2010

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings