

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENTS ON BEHALF OF STUDENT,

OAH CASE NO. 2011010031

v.

BAKERSFIELD CITY SCHOOL DISTRICT,

BAKERSFIELD CITY SCHOOL DISTRICT,

OAH CASE NO. 2010110866

v.

PARENTS ON BEHALF OF STUDENT.

ORDER GRANTING IN PART AND
DENYING IN PART MOTION TO
CONSOLIDATE

On December 28, 2010, Bakersfield City School District (District) filed an Amended Request for Due Process Hearing in Office of Administrative Hearings (OAH) OAH Case Number 2010110866 (First Case) against Student.

On December 31, 2010, Student filed a Request for Due Process Hearing in OAH Case Number 2011010031 (Second Case) against the District.

On January 11, 2011, the District filed a Request for an Expedited Due Process Hearing in OAH Case Number 2011010276 (Third Case) against Student.

On January 11, 2011, the District filed a Motion to Consolidate the First Case with the Second and Third Cases because all three cases presented common questions of fact and law. On January 13, 2011, Student filed an objection to consolidation on the ground that the District's attempt to consolidate cases was to seek a tactical advantage. On January 14, 2011, the District filed a reply brief. On January 18, 2011, Student withdrew his previous objection to consolidate, provided that OAH consolidated all three cases.

APPLICABLE LAW and DISCUSSION

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 and Second Cases involve a common question of law or fact, specifically, regarding whether the District's offers of services and placement during the 2010-2011 school years adequately addressed Student's unique needs, focusing on the adequacy of the District's September 22, 2010 and November 15, 2010 individualized educational programs. Consolidation furthers the interests of judicial economy because these two cases will involve the same witnesses and evidence. Accordingly, consolidation is granted as to First and Second Cases.

Regarding consolidation of the First and Second Cases with Third Case, a common question of law does not exist because the Third Case is an expedited hearing request. Expedited hearing requests involve different legal standards regarding whether a school district may unilaterally change a student's placement than a regular due process hearing determination of whether a school district provided a student with a free appropriate public education. (20 U.S.C. § 1415(k); 34 C.F.R. § 300.530 (2006).) Accordingly, the District's request to consolidate the Third Case with the First and Second Cases is denied.

ORDER

1. The District's Motion to Consolidate OAH Case Number 2010110866 and OAH Case Number 2011010031 is granted.
2. The District's Motion to Consolidate OAH Case Number 2010110866 and OAH Case Number 2011010031 with OAH Case Number 2011010276 is denied.
3. All dates previously set in OAH Case Number 2010110866 [First Case] are vacated.
4. 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 2011010031 [Second Case].
5. All dates previously set for hearing in OAH Case Number 2011010276 [Third Case] shall remain as scheduled.

Dated: January 20, 2011

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings