

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

ALHAMBRA SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NO. 2011020571

ORDER DENYING DISTRICT'S
MOTION TO CONSOLIDATE

FACTUAL BACKGROUND

On January 10, 2011, Student filed a request for due process (complaint) in Office of Administrative Hearings (OAH) case number 2010010298, naming the Alhambra School District. Student raises two issues in her complaint. First, she contends that the District denied her a free appropriate public education by failing to find her eligible for special education and related services since at least November 2009. Second, Student alleges that the District failed to provide her with an appropriate psycho-educational assessment in November 2009 because it failed to assess her in all areas of suspected disability.

On February 15, 2011, the District filed a complaint in OAH case number 2011020571, naming Student. The District's complaint requests an order that it be permitted to assess Student pursuant to an assessment plan dated November 5, 2010,¹ to which Student's parents have yet to consent. With its complaint, the District simultaneously filed a motion to consolidate its case with that of Student. Student filed an opposition to the motion to consolidate on February 18, 2011.

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].)

¹ The complaint contains a typographical error identifying the plan as dated November 5, 2011, instead of November 5, 2010.

In the instant case, the District contends that its case should be consolidated with Student's because Student's complaint proposes as remedies that the District assess her in the areas of occupational therapy and speech and language, as well as in the areas of autism, sensory processing, attention, and impulsivity, many of the areas in which the District proposed to assess Student in its November 5, 2010 assessment plan. The District, however, does not address whether there are any issues of law and/or fact that are common to both cases. To the contrary, in its objection, Student asserts that the two cases do not share commonality because Student's focus is on the District's failure to find her eligible for special education and related services over approximately the last two years, irrespective of the District's desire to assess her in November 2010.

Student's position is the more persuasive. There does not appear to be a nexus between the District's finding that Student was not eligible for special education in November 2009, and its desire to re-assess her in November 2010. Additionally, the District makes no contention that the same witnesses will be called for both cases, or that the factual or legal issues will be similar. There is thus no evidence that consolidation would further the interests of judicial economy.

ORDER

The District's motion to consolidate is denied.

Dated: February 28, 2011

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings