BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: TWIN RIVERS UNIFIED SCHOOL DISTRICTS, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2011020609 ORDER DENYING WITHOUT PREJUDICE DISTRICT'S MOTION TO CONSOLIDATE

BACKGROUND

On February 16, 2011, the Twin Rivers Unified School District (District) filed a due process request naming Student. The Office of Administrative Hearings (OAH) identified this case as OAH number 2011020609. In its complaint, the District asks OAH to find that it offered a free appropriate public education to Student in the least restrictive environment in the individualized education program the District developed for Student on January 28, 2011. On March 4, 2011, OAH granted Student's unopposed motion to continue the District's case, setting hearing in the matter for May 2-5, 2011.

Student, through his parent, filed a complaint against the District on February 22, 2011. OAH identified Student's case as OAH number 2011020840. Student's complaint contained 36 issues. In response to Student's complaint, the District filed a notice of insufficiency. On March 14, 2011, OAH found all but one issue of Student's complaint insufficient. The only issue which OAH found to be sufficient alleges that the District failed to provide Student with speech and language services since the beginning of the school year. OAH dismissed the remaining 35 allegations in Student's complaint but gave Student 14 days to file an amended complaint. OAH also informed Student of his right to have a mediator assist Student's parent in formulating the issues in an amended complaint. As of today's date, Student has not amended his complaint. On March 22, 2011, OAH granted Student's motion to continue the hearing in his case from April 14, 2011, to May 10, 2011.

The District filed a motion to consolidate its case (2011020609) with Student's case (2011020840) on March 14, 2011. The District contends that the cases involve common questions of fact and law and that the cases should therefore be consolidated for judicial efficiency. On March 18, 2011, Student filed an opposition to the District's motion. Student asserts that the two cases do not involve common factual or legal questions. Student also points out that as of the time the District filed its motion to consolidate, the time period for Student to file an amended complaint still had not run. If Student filed an amended

complaint, the fact scenario could be altered such that consolidation would not be appropriate, even if it were appropriate now.

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].)

Although the District asserts that its case and Student's case involve common issues of fact and law, it has failed to clarify why that is so. The issue in the District's case is whether it offered Student a free appropriate public education. The sole remaining issue in Student's case is, in essence, an allegation that the District failed to provide Student with speech and language services that Student appears to allege he was supposed to receive. Student's remaining allegation does not seek a finding that any educational program or related services provided to him or offered to him by the District was deficient. The issue presently raised by Student therefore does not involve factual or legal issues common to the issue raised by the District in its complaint. However, since Student may still amend his complaint, the District may have grounds in the future to renew its motion to consolidate should Student raise issues similar to those addressed in the District's complaint.

ORDER

The District's Motion to Consolidate is denied without prejudice. All dates previously set for hearing in this matter shall remain as scheduled.

Dated: March 29, 2011

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings