

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matters of:

REDONDO BEACH UNIFIED SCHOOL
DISTRICT,

v.

GUARDIAN ON BEHALF OF STUDENT,

GUARDIAN ON BEHALF OF STUDENT,

v.

REDONDO BEACH UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011040662

OAH CASE NO. 2011040833

ORDER DENYING STUDENT'S
SECOND MOTION TO CONSOLIDATE

On April 18, 2011, the Redondo Beach Unified School District (District) filed a Request for Due Process Hearing in Office of Administrative Hearings (OAH) case number 2011040662 (First Case), naming Student.

On April 22, 2011, Student filed a Request for Due Process Hearing in OAH case number 2011040833 (Second Case), naming the District.

On April 27, 2011, Student filed a Motion to Consolidate First Case with Second Case. On April 28, 2011, the District filed an objection to consolidation on the ground that there was not sufficient commonality between the two cases. On April 28, 2011, Student filed a response.

On April 29, 2011, Administrative Law Judge (ALJ) Peter Paul Castillo issued an Order denying Student's Motion to Consolidate Second Case with First Case. ALJ Castillo reasoned that the two cases did not share sufficient commonality of factual and legal issues and Student did not establish that consolidation would further the interests of judicial economy. According to ALJ Castillo, First Case was limited to whether District may conduct a triennial assessment of Student over Parent's objections, and Second Case involved allegations that District denied Student a free and appropriate public education (FAPE) as a result of District's March 17, 2009 individualized education program and June 12, 2009 behavior support plan.

On May 3, 2011, Student filed a Motion to Amend her complaint in Second Case. District filed an opposition on May 6, 2011. Student amended Second Case, by adding Issue 5, where she alleged that District's proposed triennial assessment was unnecessary and inappropriate because Student had just completed comprehensive independent assessments.

On May 6, 2011, District opposed Student's proposed amended complaint on the ground that Student's Issue 5 was the same or similar to Student's affirmative defenses in First Case.

On May 7, 2011, a telephonic prehearing conference was held in First Case. As further set forth in the prehearing conference order (PHCO), the issue, hearing schedule, witnesses, and Student's defenses were discussed. District stated that it intended to move forward on the scheduled hearing date of May 16, 2011, that it only had two witnesses, and that the hearing would be completed that day. District further stated that it intended to conduct oral closing argument and would not agree to a continuance of the matter for the purpose of filing written closing briefs. Student agreed that the hearing could be completed in one day, but preferred a continuance for written closing briefs. Student stated its intent to call assessor-experts that conducted Student's independent assessments. The ALJ expressed doubt that Student's proffered witnesses and testimony were relevant, but allowed Student to provide limited assessor-expert testimony. The ALJ stated that the appropriateness of Student's assessments were not relevant to First Case. The ALJ encouraged the parties to stipulate to facts to avoid the necessity of, or further limit, assessor-expert and witness testimony. The ALJ also invited the parties to provide written trial briefs setting forth the legal basis of their claims and defenses to be presented the first morning of hearing.

On May 9, 2011, ALJ Adrienne Krikorian granted Student's Motion to Amend Second Case and deemed Student's Second Case filed at that time, and reset the timelines of Second Case. ALJ Krikorian reasoned that District's opposition regarding the merits or sufficiency of Student's amended complaint was not placed in issue by Student's Motion to Amend.

On May 9, 2011, OAH issued a scheduling order in Second Case, setting the mediation for June 17, 2011, the prehearing conference for June 27, 2011, and (erroneously setting) the due process hearing for July 4, 2011.

On May 10, 2011, Student filed a Second Motion to Consolidate. Student contends that the cases should be consolidated because the same parties, issues, research, evidence and argument, are raised in both cases. On May 11, 2011, Student requested a second PHC in First Case so that her consolidation motion could be decided on May 12, 2011, one day before District's opposition was due, and before the hearing scheduled for May 16, 2011. That same day, District opposed the PHC.

APPLICABLE LAW and DISCUSSION

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted for good cause. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).)

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].)

Consolidation in this matter will not further judicial economy. Although both cases involve the same parties, as ALJ Castillo previously ruled, Issues One through Four of Second Case do not involve common questions of law and fact with First Case. With the addition of Issue Five in Second Case, as amended, Student argues that there are now common issues of law and fact. In Issue 5, Student contends that the she submitted to comprehensive assessments, and as a result of these assessments further testing by the District would not be necessary or appropriate. Student's contentions in her new Issue 5, are also defenses to District's claim in First Case. Further, the testimony presented in First Case from Student's witnesses, if relevant at all, will be limited in scope, and will not encompass Issues One through Four of Second Case. Student's argument that consolidation is required to avoid duplication of witnesses and issues in the second case is not convincing. Consolidation will not streamline the proceedings. The parties agreed that First Case could be completed in one day. Although the same witnesses may be called in Second Case to support Student's FAPE claims in Issues One through Four, Student's Issue Five, may be resolved in full by the one day proceeding in First Case.

Consolidation will prejudice the right of petitioner in First Case, the District, to have its case conducted within the statutory time period. First Case was filed on April 18, 2011. District insisted on moving forward on the original hearing date, without continuances. Second Case, as amended, will be heard at the earliest the week of July 4, 2011. Based on the pleadings, a continuance request will be required to schedule more than one hearing day, which will likely further delay the commencement of the hearing. With consolidation, the resolution of District's single issue in First Case could be delayed until the 2011-2012 school year.

For these reasons, Student's Second Motion to Consolidate is denied. Based upon this Order, it is unnecessary to conduct an additional PHC in First Case and Student's request for a PHC is denied.

ORDER

1. Student's Second Motion to Consolidate is denied.
2. Student's request for a second prehearing conference is denied.
3. The due process hearing in First Case shall proceed as scheduled at 10:00 a.m., May 16, 2011, at 1401 Inglewood Avenue, Redondo Beach.

Dated: May 12, 2011

/s/

EILEEN M. COHN
Administrative Law Judge
Office of Administrative Hearings