

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Consolidated Matters of:

CALIFORNIA VIRTUAL ACADEMIES,

OAH CASE NO. 2011051170

v.

PARENT ON BEHALF OF STUDENT,

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PARENT ON BEHALF OF STUDENT,

OAH CASE NO. 2011100242

v.

CALIFORNIA VIRTUAL ACADEMY,  
SPENCER VALLEY SCHOOL DISTRICT,  
AND CAPISTRANO UNIFIED SCHOOL  
DSITRICT.

ORDER DENYING MOTION TO  
BIFURCATE ISSUES

On May 31, 2011, California Virtual Academy (CAVA) filed a Request for Due Process Hearing in OAH case number 2022051170 (First Case), naming Student.

On October 5, 2011, Student filed a Request for Due Process Hearing in OAH case number 2011100242 (Second Case), naming CAVA, Spencer Valley School District (SVSD) and Capistrano Unified School District (CUSD). Student concurrently filed a Motion to Consolidate the First Case with the Second Case. The motion was unopposed. On October 10, 2011, ALJ Glynda Gomez ordered that the two cases be consolidated because of the common questions of law and fact regarding the provision of a FAPE to Student.

On November 4, 2011, CUSD filed a Motion to Bifurcate the first two issues of Student's complaint. On November 9, 2011, CAVA and SVSD filed a joint opposition to the motion to bifurcate on the ground that ALJ Gomez already ruled on the issue; that the evidence would be duplicative and overlapping in the two cases and therefore an effective use of judicial resources. Additionally, they argued that the motion to bifurcate was in essence a motion for reconsideration of ALJ Gomez' consolidation order, and that CUSD had not cited new facts that were not available at the time of the order. On November 10, 2011, CUSD filed a reply in support of its motion, citing CAVA's distinct IEP issues which were unrelated to CUSD's IEP issues. CAVA asserted it was an inefficient use of public resources by requiring its counsel, district witnesses to attend each day of hearing. CAVA responded that it did not file the motion earlier because it sought to mediate the matter as a

more efficient use of its resources, but was unable to coordinate mutually convenient days. On November 14, 2011, OAH received Student's opposition to CUSD's Motion for Bifurcation.

CAVA's complaint names Student and seeks a determination that its March 16, 2011 IEP offer of placement and RSP was appropriate.

Student's complaint naming CUSD seeks a determination that:

- 1) CUSD procedurally denied Student a FAPE during an undated IEP between November 2010 and January 2011 by failing to convene all essential IEP members, a physician, and by failing to consider input from Student's physician, thus depriving meaningful parental participation and resulting in a loss of educational benefit;
- 2) CUSD substantively denied Student a FAPE during an undated IEP between November 2010 and January 2011 by failing to offer an appropriate placement in the least restrictive environment, home hospital instruction.

Student's complaint naming CAVA and SVSD seeks a determination that:

- 3) CAVA and SVSD procedurally denied Student a FAPE during an undated IEP beginning January 2011 to the present by failing to conduct appropriate assessments, thus depriving meaningful parental participation and resulting in a loss of educational benefit.;
- 4) CAVA and SVSD procedurally denied Student a FAPE during an undated IEP beginning January 2011 to the present by failing to give proper notice of the IEP, and by failing to convene all necessary IEP team members, a physician, thus depriving meaningful parental participation and resulting in a loss of educational benefit.; and
- 5) CAVA and SVSD substantively denied Student a FAPE during an undated IEP beginning January 2011 by failing to offer an appropriate placement in the least restrictive environment, home hospital instruction.

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].)

ALJ Gomez ruled that the complaints involved a common question of law or fact. CUSD seeks a motion for reconsideration without identifying new facts or law which was not known to parties at the time of the order. On their face, the issues as to all respondents overlap in that they both allege that a physician was required at the IEP team meeting and that the offered placement was inappropriate. Accordingly, CUSD's motion is denied. The matter will remain consolidated. The hearing ALJ shall have complete discretion to make

orders regarding the presentation of evidence based on judicial economy and the interests of justice.

ORDER

CUSD's Motion to Bifurcate is denied

Dated: November 17, 2011

/s/

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DEBORAH MYERS-CREGAR  
Administrative Law Judge  
Office of Administrative Hearings