

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

OAH CASE NO. 2011090698

v.

LUCIA MAR UNIFIED SCHOOL DISTRICT,

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LUCIA MAR UNIFIED SCHOOL DISTRICT,

OAH CASE NO. 2011070196

v.

PARENT ON BEHALF OF STUDENT.

ORDER GRANTING MOTION TO  
CONSOLIDATE

On July 7, 2011, Lucia Mar Unified School District (District) filed a request for due process hearing (complaint) with the Office of Administrative Hearings (OAH), OAH case number 2011070196 (District's case), naming Student.

On September 19, 2011, Student filed a complaint in OAH case number 2011090698 (Student's case), naming the District and the San Luis Obispo County Office of Education (SLOCOE), and accompanying the complaint was a motion to consolidate the District's case with the Student's case. On September 21, 2011, the District filed an opposition to the motion to consolidate. On September 22, 2011, Student filed a response to the District's opposition.<sup>1</sup>

APPLICABLE LAW

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

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<sup>1</sup> Student's response was received after this order had been drafted, but was reviewed and considered. There was no need to revise this order in light of this response as many of the arguments response were already contained in the order.

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].)

## DISCUSSION

In its complaint, the District asks that OAH declare that its offer of special education placement and services to Student on November 9, 2010 (as subsequently amended), was an offer of a free and appropriate education (FAPE) to Student for the 2010-2011 school year (SY), and that its offer of June 6, 2011 was an offer of a FAPE for the 2011-2012 SY. Student's complaint asks that OAH find that the IEP offers of placement and services that the District made for the 2010-2011 SY, and the 2011-2012 SY were not offers of a FAPE, and further that OAH find that she was denied a FAPE for the 2009-2010 SY. Accordingly, the complaints do present several common issues of law and fact.

The District's opposition to the motion to consolidate, while creative, is not persuasive. First, without citing any authority, the District claims that because it has 15 days after the filing of a complaint to file a notice of insufficiency (NOI), it is premature for Student to file a motion for consolidation contemporaneously with the complaint, and she should wait until 15 days have elapsed to give the District the opportunity to file an NOI.<sup>2</sup> However, nothing precludes a party from filing an NOI fewer than 15 days after a complaint is filed, and nothing in the law precludes a motion for consolidation being filed contemporaneously with a new complaint. Accordingly, the District has failed to support denial of the motion to consolidate the complaints on this ground.

The District's second argument is that granting the motion to consolidate prevents the "speedy resolution" of the District's own case, since consolidating the cases will result in new dates being set for a due process hearing, and the due process hearing is now set for September 27, 2011. When a student files a request for due process, he is entitled to have a resolution session convened by the school district, to attempt to informally resolve the complaint. (Ed. Code § 56501.5.) Therefore, the District is correct in stating that consolidation will delay the hearing in his case. However, this, in and of itself, is not grounds for denying the motion for consolidation. While consolidation may delay the hearing of an earlier filed matter, consolidation is based upon whether it serves judicial economy and not upon the impact it may have upon previously set dates. Here, for example, if the motion to consolidate is not granted and the District's case proceeds to hearing, a Decision in that case will probably not be rendered before November 14, 2011 at the earliest. Student's case is scheduled to commence on November 16, 2011, but since the Decision in

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<sup>2</sup> A complaint is deemed sufficient unless a party notifies OAH and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has not met the notice requirements. (20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).)

the District's case may impact some issues in Student's case, that case will need to be continued so the parties and OAH can decide the effect of that Decision on Student's case. Then, that will delay the Decision in the Student's case. It is, therefore, far more judiciously economical for OAH to consolidate these cases, and continue the dates for mediation, a PHC, and due process hearing in the consolidated cases to the same dates now set for those events in Student's case, pursuant to the Scheduling Order issued on September 22, 2011.

The District also argues that the interests of judicial economy will not be served because it is only asking that its offers of November 9, 2010, and June 6, 2011 be adjudicated, and during a prehearing conference (PHC) on September 19, 2011, "Student's disagreement with the IEP [individualized education program] Offer is limited to the placement, augmentative alternative communication, aide support transition plan, annual goals and a transition plan for adulthood and adaptive living skills, and extended school year services. [Emphasis added.]" It is unclear why the District takes the position that Student's "disagreement" specifics are not just another way of Student saying she believes the IEP offers deny her a FAPE. Further, the District claims that because Student's complaint adds another school year, the 2009-2010 SY to the issues, and Student adds another party, SLOCOE, its motion for consolidation should be denied. This argument is also without legal support, and is not grounds for denying the motion.

In regards to the theory that granting the motion for consolidation eliminates the risk of inconsistent rulings, the District argues that "OAH's decision on the District's Case can thereafter be utilized by Student to either limit the issues in Student's Case if the District prevails, or shorten the hearing time necessary for Student to seek relief from the District in Student's Case to the extent that OAH determines that the IEP Offer is not a FAPE." However, there is no guarantee that the same ALJ will hear both cases, and because evidence may not be identical in both cases, inconsistent rulings may well result.

Finally, the District asks that OAH "consider the timing of Student filing Student's Case" because there was a statement during the PHC hearing on September 19, 2011, that Student was "not prepared to go to hearing in the District's Case." Therefore, the District contends, Student had no "genuine desire to achieve judicial economy." Instead, according to the District, Student merely intends to delay the hearing of the District's case. Student filed a complaint that is 20 single-spaced typed pages in length. Student's complaint raises genuine issues and does not appear to have been written simply to delay the proceedings. Accordingly, the District has failed to present any argument that would support a denial of Student's motion to consolidate.<sup>3</sup>

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<sup>3</sup> The District also asks that portions of Student's complaint be stricken because they refer to apparent negotiations between the parties as they have attempted to resolve this case. However, OAH has not conducted mediation in this case, and since no specifics are given about these negotiations, which may be in the context of informal resolution sessions or IEP meetings, there is no need to strike this matter in Student's complaint.

ORDER

1. Student's motion to consolidate is granted.
2. All dates previously set in the District's case, OAH Case Number 2011070196, are vacated.
3. The dates previously set in the Student's case, OAH Case Number 2001090698, are confirmed. The mediation in the above-captioned case shall be held on November 3, 2011, at 9:30 a.m. The telephonic PHC in the consolidated cases shall be held on November 9, 2011 at 1:30 p.m. The due process hearing in this matter shall commence on November 16, 2011 at 9:30 p.m.
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 Student's case, OAH Case Number 2011090698.

Dated: September 22, 2011

/s/

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REBECCA FREIE  
Administrative Law Judge  
Office of Administrative Hearings