

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENTS ON BEHALF OF STUDENT, v. LOS ANGELES UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2011090815
LOS ANGELES UNIFIED SCHOOL DISTRICT, v. PARENTS ON BEHALF OF STUDENT.	OAH CASE NO. 2011070306 ORDER GRANTING STUDENT'S MOTION TO CONSOLIDATE

PROCEDRUAL HISTORY

On July 11, 2011, the Los Angeles Unified School District (District) filed a Request for Due Process Hearing in OAH case number 2011070306 (First Case), naming Student as the respondent. The due process hearing for that case is presently set for October 24-27, 2011.

On September 22, 2011, Student filed a Request for Due Process Hearing in OAH case number 2011090815 (Second Case), naming the District as the respondent. Student's case is set for mediation on November 1, 2011, for a prehearing conference on November 9, 2011, and for hearing on November 16, 2011. All are initial dates.

On September 26, 2011, Student filed a Motion to Consolidate the First Case with the Second Case. Student also moved for an order retaining the hearing dates set in the First Case and an order setting mediation in the consolidated dates for either October 11, 12, or 13, 2011.

In his motion to consolidate, Student indicates that he sought a stipulation from the District agreeing to the consolidation, but that the District declined to stipulate. Student does not indicate in his motion whether he discussed with the District Student's proposal to retain the dates for hearing in the First Case should the Office of Administrative Hearings (OAH)

grant Student's motion to consolidate. Although the District declined to stipulate to consolidating the two cases, it has not filed an objection or otherwise responded to Student's motion.

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].)

Here, the First Case and Second Case involve common questions of law or fact. In its case, the District seeks an order validating its occupational therapy and recreational therapy assessments, and finding that it is not required to provide Student with independent evaluations funded by the District in those areas. Student's complaint alleges that the District procedurally and substantively denied Student a free appropriate public education for three school years. It also specifically contends, inter alia, that the District's occupational therapy and recreational therapy assessments were not appropriate. The latter issue is the counter issue to that raised by the District in its complaint. It is therefore appropriate to consolidate the two cases so that the issues may be heard in one proceeding. In addition, consolidation furthers the interests of judicial economy because it avoids two hearings being held concerning one issue and avoids the possibility of contradictory administrative decisions. Accordingly, consolidation is granted.

However, there are presently no grounds for setting the consolidated hearing on the dates presently set to hear the District's case. Student's case was filed on September 22, 2011. The resolution period does not expire until October 22, 2011. It would therefore be precipitous to set a hearing in Student's case for two days after the resolution period has expired barring the District's express agreement to hold the hearing on the dates proposed by Student. Additionally, given the fact that the District's case itself is set for three and a half days of hearing, and the fact that Student's complaint involves allegations of denials of a free appropriate public education over three school years, it does not appear that the entire consolidated matter can be heard in the time presently set for the District's case. Therefore, the administrative law judge will retain the dates presently set for Student's case in this matter. The parties are urged to confer regarding the amount of time they feel they will need for the consolidated hearing, and to file a request to continue the dates if they reach agreement on new hearing dates.

ORDER

1. Student's Motion to Consolidate is granted.

2. All dates previously set in OAH Case Number 2011070306 [First Case] are vacated.
3. The Mediation in the consolidated matter shall be held on November 1, 2011, at 9:30 a.m. The Prehearing Conference in the consolidated cases shall be held on November 9, 2011, at 10:00 a.m. The Due Process Hearing in the consolidated cases shall be held on November 16, 2011, beginning at 9:30 a.m.
4. The parties are directed to meet and confer with regard to the time they feel they need for the consolidated hearing and, if they agree on other dates, to submit a joint request for continuance to OAH. If the parties cannot agree on dates, either party may submit a motion for continuance and/or for additional hearing days to OAH.
5. 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 OAH Case Number 2011090815 [Second Case].

Dated: October 6, 2011

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings