

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. SANTA ROSA CITY SCHOOLS,	OAH CASE NO. 2011110550
SANTA ROSA CITY SCHOOLS, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2011100706 ORDER GRANTING MOTION TO CONSOLIDATE

On October 19, 2011, Santa Rosa City Schools (District) filed a Request for Due Process Hearing (Complaint) in OAH case number 2011100706 (First Case), naming Student as respondent. Pursuant to the stipulated joint request of District and Student, the Office of Administrative Hearings (OAH) issued an October 26, 2011 order in the First Case, continuing the mediation to November 15, 2011, the prehearing conference (PHC) to November 28, 2011, and the due process hearing to December 5, 6 and 7, 2011. On November 4, 2011, District filed a notice cancelling the mediation and stating the matter should proceed to hearing.

On November 15, 2011, Student filed a Request for Due Process Hearing (Complaint) in OAH case number 2011110550 (Second Case), naming District as respondent. On November 16, 2011, OAH issued a scheduling order in the Second Case, setting the mediation for December 20, 2011, the PHC for January 4, 2012, and the due process hearing for January 10, 2012.

Concurrent with the filing of his complaint, Student filed a Motion to Consolidate the First Case with the Second Case and requested that the hearing dates of the First Case be retained for both consolidated cases. On November 16, 2011, District filed its opposition to consolidation; on November 18, 2011, Student filed his response to District's opposition.

Consolidation

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].)

In the First Case, District seeks to have its offer of placement for Student, as described in the IEPs of May 2, May 11, and May 25, 2011, as supplemented by the IEP of October 6, 2011, found sufficient to provide Student with a free appropriate public education (FAPE) in the least restrictive environment (LRE).

District asserts detailed supporting facts which include alleged conduct by Student's parent and District from the beginning of the 2010-2011 school year, the various offers from the May 2011 IEP meetings, email and telephonic communications between Student's parent and the District, personal meetings between Parent and District staff, and the October 6, 2011 IEP. These IEPs included offers for placement and services for ESY 2011 and the 2011-2012 school year. District states the Parent has not provided written consent for implementation of the offered placement or services.

In the Second Case, Student asserts that District failed to provide a FAPE to Student for the 2010-2011 school year, 2011 extended school year (ESY), and the 2011-2012 school year. Student asserts five issues in support of his contention. The first three issues are purely procedural and include listings of various District procedural failures which would meet the statutory standard of denying Student a FAPE. The fourth issue asserts District failed to include appropriate educationally-related mental health services in its offer. The fifth issue generally asserts that the District's offers were not designed to meet Student's unique needs and reasonably calculated to provide educational benefit in the LRE.

Student contends that consolidation is appropriate because both complaints involve the same parties, the same documentary evidence, the same witnesses and, ultimately, the same issue. That is, did the District offer a FAPE to Student in the LRE?

District opposes the consolidation, contending that the Student's complaint would greatly expand the issues to be determined at hearing because the District's complaint asserts one issue and the Student's complaint asserts five issues with twenty-one sub-issues. However, the issues in Student's complaint could be asserted in defense of District's complaint. For example, Student could contend the District's alleged procedural violations, which are listed in Student's complaint, demonstrated that District did not properly conduct the IEP that are the basis for District's complaint. Further, District alleges facts in its complaint that cover the same time period as set forth in the Student's complaint. Both complaints, on their face, involve the same IEP team meetings, personal meetings, communications, conduct, and offers.

The First Case and Second Case involve common questions of law and fact. Consolidation furthers the interests of judicial economy because the issues involve the same

documentary evidence and witness testimony. Accordingly, the motion to consolidate is granted.

Student requests that its Second Case be assigned the hearing dates for which the District's First Case is scheduled, contending that its request should be deemed a written waiver of a resolution session. However, waiver of the resolution session requires mutual consent and the District, in opposing the motion, has not waived the resolution session. Accordingly, the two cases are consolidated and the Student's Second Case is deemed the primary case for all further computations relevant to statutory timelines.

ORDER

1. Student's Motion to Consolidate is granted.
2. All dates previously set in District's First Case, OAH Case Number 2011100706, are vacated.
3. The 45-day timeline for issuance of the decision in the consolidated cases shall be based on the date of the filing of the Student's complaint in the Second Case, OAH Case Number 2011110550.
4. The dates set for proceedings in the Second Case shall apply to these consolidated cases. The mediation is 9:30 a.m., December 20, 2011; the PHC is 1:30 p.m., January 4, 2012; and the due process hearing is 9:30 a.m. January 10, 2012.

Dated: November 18, 2011

/s/

CLIFFORD H WOOSLEY
Administrative Law Judge
Office of Administrative Hearings