

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

OAH CASE NO. 2011120543

v.

PLUMAS UNIFIED SCHOOL DISTRICT,
PLUMAS COUNTY OFFICE OF
EDUCATION, AND PLUMAS SPECIAL
EDUCATION LOCAL PLAN AREA

PARENT ON BEHALF OF STUDENT,

OAH CASE NO. 2012030888

v.

CALIFORNIA DEPARTMENT OF
EDUCATION

ORDER GRANTING MOTION TO
CONSOLIDATE, AND DENYING
MOTION TO ADD PARTY AS MOOT

On February 13, 2012, Student filed a second amended request for due process hearing (second amended complaint) in OAH Case Number 2011120543 (Student's First Case), naming Plumas Unified School District, Plumas County Office of Education, and Plumas Special Education Local Plan Area as respondents. The second amended complaint alleged denials of a free appropriate public education (FAPE) arising out of: (1) Parent's withdrawal of Student from school when District proposed restraining Student on the school bus, and District's subsequent alleged refusal to allow Student to re-enroll; (2) failures to appropriately assess Student during the school years 2008-2012; (3) procedural and substantive deficiencies in numerous individualized educational programs (IEP's) from October 2008 through October 2011; (4) failure to assess for transition needs or to offer a transition plan or transition services; (5) failure to implement the terms of a settlement agreement; and (6) failure to provide appropriate instruction in math and language arts. The complaint alleged that all three Respondents were the parties responsible for these denials of FAPE

On March 20, 2012, Student filed a Motion to add California Department of Education (CDE) as a party. Student's Motion stated that Student had filed a separate due process complaint against CDE and was seeking, in the alternative, to consolidate the two matters.

On March 22, 2012, Student filed the separate due process complaint against CDE. OAH assigned Case No. 2012030888 to that matter (Student's Second Case). The complaint against CDE in Student's Second Case alleged that California School for the Deaf (CSD) and California School for the Blind (CSB), both in Fremont, California, had denied Student a FAPE by failing to assess him during the 2010-2011 and 2011-2012 school years.

On March 22, 2012, respondents in Student's First Case opposed the Motion to Add Party/Consolidate. On March 26, 2012, CDE filed a Motion to Dismiss in Student's First Case regarding the Motion to Add Party. Since CDE has not yet been made a party to Student's First Case, it cannot move to dismiss, therefore its Motion to Dismiss is treated as an opposition to Student's motion seeking to add CDE as a party to Student's First Case.

In Student's Second Case, Case No. 2012030888, CDE filed a Motion to Dismiss on March 29, 2012, which Student opposed on March 30, 2012, and to which CDE replied on April 5, 2012.¹ That Motion, Opposition and reply are pertinent here. CDE's Motion stated that CSD and CSB operate under the auspices of CDE, and conduct assessments when referred by Student's local educational agency (LEA) when such assessments are judged to be appropriate. CDE's Motion asserted that Student's LEA had referred Student to CSD and CSB for assessments, however those entities declined to assess him, finding that Student was neither vision- nor hearing-impaired, and thus that such assessments were not appropriate. Student's opposition argued that the assessments at issue were agreed upon between Student and his LEA pursuant to the terms of the settlement agreement between them; Student's opposition and CDE's reply also made counterarguments regarding whether vision and hearing assessments were appropriate for this Student.

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, both of Student's cases involve common questions of law or fact, specifically, the facts surrounding the assessments required by the settlement agreement. Consolidation therefore furthers the interests of judicial economy. Accordingly, consolidation is granted.

¹ CDE's Motion to Dismiss in Case No. 2012030888 is disposed of by separate Order.

ORDER

1. Student's Motion to Consolidate is granted.
2. All dates previously set in OAH Case Number 2011120543 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 complaint in OAH Case Number 2012030888.
4. In light of this Order, Student's Motion to Add CDE as a party to OAH Case Number 2011120543 is moot, and is denied.

Dated: April 09, 2012

/s/

JUNE R. LEHRMAN
Administrative Law Judge
Office of Administrative Hearings