

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

v.

TEMECULA VALLEY UNIFIED SCHOOL
DISTRICT,

OAH CASE NO. 201202005 and
2012020458

TEMECULA VALLEY UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2012090247

ORDER GRANTING MOTION TO
CONSOLIDATE AND DENYING
STUDENT'S MOTION TO DISMISS
DISTRICT'S COMPLAINT

On January 31, 2012, Student filed a Request for Due Process Hearing in OAH case number 201202005 (First Case), naming District. On February 13, 2012, Student filed a Request for Due Process Hearing in OAH case number 2012020458 (Second Case), naming District. These cases were consolidated on June 5, 2012 .

On September 7, 2012, District filed a Request for Due Process Hearing in OAH case number 2012090247 (Third Case), naming Student.

On September 10, 2012, District filed a Motion to Consolidate the First and Second Case with the Third Case. District contends consolidation is appropriate because all three cases involve a common question of law and fact, and involve the identical witnesses and evidence. Specifically the District's complaint concerns an offer of placement at a non-public school made in the April 16, 2012 and August 24, 2012 individualized educational programs (IEPs), which Student rejected on the grounds that the IEP offers denied Student a free appropriate public education (FAPE). District further states that the First and Second cases are currently scheduled for hearing on November 6-8, and 13-15, 2012 consolidation of the matters will not result in delay and no continuance is required as the cases can be heard on the currently established hearing schedule.

Student, who is not represented in District's case, has not filed an objection to consolidation or moved to dismiss District's complaint.¹ However on September 13, 2012, counsel in the first and second case filed opposition to consolidation and a motion to dismiss District's case on the ground that District's complaint is moot.

As discussed below, District's motion to consolidate is granted and the motion to dismiss the complaint is denied.

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].)

Student's complaints in the First and Second Case allege District denied Student a FAPE in the August 2, 2011, and February 2012 IEPs for the 2011-2012 school year for failing to provide assessments and an appropriate placement including an offer of placement at Oak Grove, an NPS. District's complaint seeks a determination that the August 24, 2012 IEP, like the April 16, 2012 IEP, offered Student a FAPE including its offer of placement at Oak Grove for the 2012-2013 school year. The First, Second and Third Cases involve a common question of law and fact, specifically; all three cases involve the issue of whether District made a FAPE available in its offers of placement in the 2011-2012 and the 2012-2013 school years. In addition, consolidation furthers the interests of judicial economy because each of the cases involves the numerous witnesses and evidence applicable to all three cases. Accordingly, consolidation is granted.

Motion to Dismiss

Generally, OAH will entertain motions to dismiss allegations that are facially outside of OAH jurisdiction. For example, civil rights claims, discrimination claims, and claims related to enforcement of settlement agreements are the types of claims that are amenable to dismissal without the need for testimony or witness credibility determinations.

¹ Student turned 18 years of age on August 28, 2012. District asserts that this complaint was brought against Student as District has not received notice of transfer of educational rights to Parents who are named in Student's First and Second Cases, referenced above. Parent's attorney in the First and Second Case has stated in the opposition that Parents have been provided a durable power of attorney to make decisions regarding Student's educational rights in the First and Second Cases. However, Counsel also states she has not been retained to represent Student in the Third Case as of the date of filing the opposition and motion to dismiss.

In the motion to dismiss, Counsel contends that District's complaint should be dismissed because Student through her Parent recently consented to the August 24, 2012 IEP offer of placement at Oak Grove and thus the issue of placement is moot. First, Parent's attorney has no standing to move for dismissal of District's complaint as she does not represent respondent Student in that case. Second, even assuming there is standing to entertain the motion to dismiss, parent's attorney has failed to point to any authority that would require OAH to hear and determine the equivalent of a motion for summary adjudication on the ground District's complaint is moot, without giving the petitioner the opportunity to develop a factual record regarding the issues raised in the complaint. This is particularly true where the motion to dismiss is supported only by a cursory declaration from an attorney who did not represent Student as of the date of this motion and with no further evidence supporting dismissal of District's case. Accordingly, there is no basis for dismissal of District's complaint and the motion is denied.

ORDER

1. District's Motion to Consolidate is granted.
2. The consolidated matters shall proceed on the dates set for hearing in the previously consolidated cases 2012020458 and 2012020005 (First and Second Cases). All other dates 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 Order Following Prehearing Conference issue in OAH Case Number 2012020458 (primary case).

Dated: September 24, 2012

/s/

STELLA OWENS-MURRELL
Administrative Law Judge
Office of Administrative Hearings