BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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| In the Consolidated Matters of:<br><br>PARENTS ON BEHALF OF STUDENT,<br><br>v.<br><br>LAKESIDE UNION SCHOOL DISTRICT, | OAH CASE NO. 2012071004 |
| LAKESIDE UNION SCHOOL DISTRICT,<br><br>v.<br><br>PARENTS ON BEHALF OF STUDENT. | OAH CASE NO. 2012050216<br><br>ORDER GRANTING STUDENT'S MOTION TO CONSOLIDATE |

On May 2, 2012, the Lakeside Union School District filed a Request for Due Process Hearing (District complaint) in OAH Case Number 2012050216 naming Parents on behalf of Student (Student) as respondent. The District seeks an order permitting the District to implement a decision of the Individualized Education Program (IEP) team, made at the IEP meeting on January 11, 2012, to exit Student from receiving special education and related services. The Prehearing Conference is scheduled for August 13, 2012, and the Due Process hearing for August 20-22, 2012.

On July 30, 2012, Student filed a Request for Due Process Hearing (Student complaint) naming the District as respondent. This matter was designated OAH Case Number 2012071004. In her complaint, Student asserts that the District failed to respond to Parents' request for an Independent Educational Evaluation made at the December 7, 2011 IEP meeting. Student also alleges that the District failed to assess in all areas of suspected disability during the District's January 2012 assessment because the District failed to include an assessment in the area of Occupational Therapy (OT) based on a parental request plus information from parents and service providers. In the Student's case, OAH has scheduled mediation for September 6, 2012, the Prehearing Conference on September 17, 2012, and the Due Process hearing to start on September 25, 2012.

On July 30, 2012, Student also filed a motion to consolidate her case with that of the District. On August 3, 2012, the District filed an opposition to that motion. On August 6, 2012, Student filed a response to the District's opposition to the motion.

## DISCUSSION

OAH will generally consolidate matters that involve a common question of law and/or fact and that involve the same parties, and when consolidation of the matters furthers the interests of judicial economy and will obviate potentially inconsistent rulings. While no statute or regulation specifically provides a standard to be applied in deciding a motion to consolidate special education cases, California statutes offer, by analogy, a standard appropriate to special education cases. Government Code section 11507.3, subdivision (a), provides that an administrative law judge "may" order pending administrative proceedings consolidated if they involve "a common question of law or fact . . .." California Code of Civil Procedure section 1048, subdivision (a), applies the same standard to the consolidation of civil cases.

The District cites *Corona-Norco Unified School District v. Parents* (OAH Case No. 2009061130) (*Corona*) in support of their opposition. In *Corona*, OAH was faced with a similar situation. The Corona-Norco Unified School District (CNUSD) filed a complaint seeking an order declaring the last IEP proposal constituted a free appropriate public education (FAPE) for the student. On September 28, 2009, Student filed a complaint alleging that the District had failed to provide student with a FAPE. Both issues involved similar facts, witnesses and legal issues. On October 1, 2009, OAH, per ALJ Susan Ruff, denied Student's motion to consolidate the two cases as "[i]t would not serve the interests of judicial economy to delay and lengthen the District's case." (Oct. 1, 2009 Order at p. 2.) Judge Ruff cited the 11th hour filing by Student of his complaint as not demonstrating good faith. (October 1, 2009 Order at p.1.) But unlike *Corona*, Student did not wait to the eleventh hour to file her complaint. Here, Student's parents did not retain counsel until the mediation was concluded on June 7, 2012, and Student's counsel filed the complaint within a reasonable period of retention.

In her response, Student points out that she will raise as a defense to the District complaint that the assessment utilized by the IEP team as the basis for deciding to exit Student from special education was not appropriate in that the District failed to assess Student in all areas of disability. This defense is identical to the issues raised in the Student's complaint. Thus, both cases involve similar issues, the same evidence, and many of the same witnesses. Here, judicial economy would be served by having the cases consolidated.

In its motion, the District does not contend that the District would be prejudiced if the cases were consolidated and the hearing held as scheduled in the latter case-approximately one month's delay. In its opposition, the District contends that Student would suffer no prejudice by the denial of the motion. This contention is incorrect as Student would be prejudiced by the cost of re-litigating the appropriateness of the District assessment.

In the instant case, Student has demonstrated good cause for the consolidation. Student's motion to consolidate is granted.

ORDER

1. Student's Motion to Consolidate is granted.
2. All dates previously set in OAH Case Number 2012050216 (District complaint) are vacated.
3. All dates set in the scheduling order dated July 31, 2012 in OAH Case Number 2012071004 will apply to the consolidated matter.
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 OAH Case Number 2012071004 (Student's complaint).

Dated: August 7, 2012

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings