

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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| In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. LOS ANGELES UNIFIED SCHOOL DISTRICT, | OAH CASE NO. 2012090211 |
| LOS ANGELES UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT. | OAH CASE NO. 2013010694 ORDER GRANTING MOTION FOR CONSOLIDATION |

On September 7, 2012, Student filed a request for a due process hearing (complaint) with the Office of Administrative Hearings (OAH) in OAH case number 2012090211 (First Case), naming the Los Angeles Unified School District (District). Following several continuances, this matter is now set for a prehearing conference on March 4, 2013, and a due process hearing on March 12, 13, and 14, 2013.

On January 23, 2013, District filed a complaint naming Student, in OAH case number 2013010694 (Second Case). This matter is set for a prehearing conference on February 13, 2013, and a due process hearing on February 21, 2013.

On February 1, 2013, District filed a motion to consolidate the First Case with the Second Case, and to continue the Second Case so that both matters would be heard on the dates set for OAH Case No. 2012090211. Student did not file a response to the motion.

APPLICABLE LAW

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, section 11507.3, subd. (a) [administrative proceedings may be consolidated if they involve a common question of law or fact]; Code of Civ. Proc., section 1048, subd. (a) [same applies to civil cases].)

The procedural safeguards of the Individuals with Disabilities Education Act (IDEA) provide that under certain conditions a student is entitled to obtain an independent educational evaluation (IEE) at public expense. (20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.502 (a)(1); Ed. Code, section 56329, subd. (b) [incorporating 34 C.F.R. § 300.502 by reference]; Ed. Code, section 56506, subd. (c) [parent has the right to an IEE as set forth in Ed. Code, section 56329].) “Independent educational assessment means an assessment conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question.” (34 C.F.R. § 300.502(a)(3)(i).) To obtain an IEE under these provisions (IEE laws), the student must disagree with an assessment obtained by the public agency and request an IEE. (34 C.F.R. § 300.502(b)(1), (b)(2).)

When a local educational agency fails to provide a free appropriate public education (FAPE) to a student with a disability, the student is entitled to equitable relief that is “appropriate” in light of the purposes of the IDEA. (*School Comm. of Burlington v. Department of Educ.* (1985) 471 U.S. 359, 370; *Parents of Student W. v. Puyallup School Dist., No. 3* (9th Cir. 1994) 31 F.3d 1489, 1496.) An administrative law judge (ALJ) may order an IEE as an equitable remedy against a school district that has failed to comply with its child find obligations. (*Los Angeles Unified Sch. Dist. v. D.L., etc.* (2008) 548 F. Supp.2d 815, 822-823.)

ANALYSIS

Here, while the First Case and Second Case technically do not involve common legal issues per se, they involve common questions of facts and overlapping or related legal and equitable remedies. In the First Case, Student claims that District violated its child find duties and failed to assess him. Under the above authorities, Student’s requests for OAH to order District to reimburse Parent for the costs of a private neuropsychological IEE, and to fund IEE’s in the areas of speech and language, auditory processing, and occupational therapy are requests for equitable relief. District’s assertion that Student’s case involves the IEE laws is therefore incorrect.

In the Second Case, District asserts it assessed Student prior to an individualized education program meeting on January 10, 2013, and Student disagrees with its speech and language assessment. District alleges a discreet issue of whether its speech and language assessment of Student is appropriate such that it should not be required to fund a speech and language IEE under the IEE laws. District’s issue is also a defense or mitigating matter in Student’s case. In addition, facts pertaining to the various assessments District did conduct must be considered by the ALJ’s hearing the cases, particularly as to appropriate remedies, if any. The hearings would also likely involve common witnesses and evidence. Consolidation of the matters therefore furthers the interests of judicial economy and will

avoid the risk of inconsistent rulings. Accordingly, the motion is granted. Based on the consolidation, cause exists to continue the Second Case.

ORDER

1. District's Motion to Consolidate is granted.
2. All dates previously set in OAH Case number 2013010694 (Second Case) are vacated and the case is continued. The consolidated cases shall proceed on the dates scheduled in OAH Case number 2012090211 (First Case) as follows: a mandatory telephonic prehearing conference on March 4, 2013, at 10:00 a.m., and the due process hearing on March 12, 13, and 14, 2013.¹
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 2012090211 (First Case).

Dated: February 8, 2013

/s/

DEIDRE L. JOHNSON
Administrative Law Judge
Office of Administrative Hearings

¹ The parties shall be prepared at the prehearing conference to discuss whether additional time may be necessary for the hearing due to this consolidation.