

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

OAH CASE NO. 2012090554

v.

FREMONT UNIFIED SCHOOL DISTRICT,

FREMONT UNIFIED SCHOOL DISTRICT,

OAH CASE NO. 2012120305

v.

PARENT ON BEHALF OF STUDENT.

ORDER GRANTING MOTION TO
CONSOLIDATE

On September 18, 2012, Parent on behalf of Student filed with the Office of Administrative Hearings (OAH) a Request for Due Process Hearing in OAH case number 2012090554 (First Case), naming Fremont Unified School District (District).¹ On September 19, 2012, OAH issued a scheduling order for the First Case setting mediation for October 23, 2012, the prehearing conference (PHC) for November 5, 2012 and the due process hearing for November 13, 2012. On October 26, 2012, OAH granted the parties' joint request for an initial continuance and most recently, at the PHC on December 10, 2012, Administrative Law Judge Troy Taira granted the parties' further request for continuance. The First Case is now scheduled for a PHC on January 14, 2013 with the due process hearing to start on January 22, 2012.

On December 10, 2012, the District filed a Request for Due Process Hearing in OAH case number 2012120305 (Second Case), naming Student.² On December 11, 2012, OAH issued a scheduling order for the Second Case setting mediation for December 26, 2012, the PHC for December 31, 2012, and the due process hearing for January 9, 2013.

¹ Student's request for due process hearing was received after 5:00 p.m. on September 17, 2012 and therefore is deemed filed the following business day.

² The District's request for hearing and motion to consolidate were received after 5:00 p.m. on December 7, 2012, and therefore were filed on Monday, December 10, 2012.

On December 10, 2012, the District filed a Motion to Consolidate the Second Case with the First Case. 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, § 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].)

DISCUSSION

Here, the First Case and Second Case involve common questions of law and fact, specifically, whether the District has offered Student a free and appropriate public education (FAPE) for the two years prior to the filing of Student's complaint through the present time. Student's complaint alleges a denial of FAPE in that the District has failed to properly assess Student in all suspected areas of disability, and has failed to tailor an appropriate educational program to meet her unique needs. Additionally, Student alleges the District violated her procedural rights by failing to include Parents in the decision-making process, failing to provide prior written notice, and failing to provide a complete copy of Student's educational records. Student seeks reimbursement for her unilateral private placement at Bayhill High School. The District's complaint raises the sole issue of whether its December 7, 2012 proposed individualized education program (IEP) offers Student a FAPE in the least restrictive environment. The District alleges that this offer is substantially similar to its offer of FAPE in March and June of 2012. Student's complaint encompasses the issue raised in the District's complaint. Consolidating these matters will prevent the risk of inconsistent rulings.

In addition, consolidation furthers the interests of judicial economy because both cases involve the same parties and many of the same witnesses would be required to testify in each proceeding, including Student's expert Dr. Kosters, the District psychologist, and various District staff members as well as staff from Bayhill High School. Each matter will also involve the introduction of similar items of documentary evidence including multiple IEP documents from 2012 and the assessment reports from the District psychologist and from Student's expert. Accordingly, consolidation is granted.

When consolidating cases, OAH designates the statutory timelines applicable to the consolidated matters to be controlled by one of the cases. Here, the statutory timelines shall be controlled by the First Case.

ORDER

1. The District's Motion to Consolidate is granted.
2. All dates previously set in the Second Case, OAH Case Number 2012120305 are vacated.
3. The consolidated cases shall now be heard on the dates currently set for the First Case. Namely, the PHC for the consolidated cases shall be held on January 14, 2013 at 1:30 p.m., and the due process hearing shall be held on January 22, 2013 commencing at 1:30 p.m. and continuing thereafter, day-to-day, Monday through Thursday at 9:00 a.m. **The parties are encouraged to contact OAH for the scheduling of a mediation date should they desire to participate in mediation.**
4. The 45-day timeline for issuance of the decision in the consolidated cases shall be based on the date of the filing of Student's complaint, the First Case, in OAH Case Number 2012090554.

Dated: December 19, 2012

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings