

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

PARENT ON BEHALF OF STUDENT,

v.

DOWNEY UNIFIED SCHOOL DISTRICT,

OAH CASE NO. 2014010242

ORDER DENYING REQUEST FOR
CONSOLIDATION

On January 7, 2014, Student filed a Request for Due Process Hearing in OAH case number 2014010242 (First Case), naming Downey Unified School District (District). On February 12, 2014, OAH granted a continuance, setting the prehearing conference (PHC) for April 21, 2014, and the hearing for May 5, 6, 7, 8, and 12, 2014.

On April 21, 2014, Administrative Law Judge (ALJ) Clifford H. Woosley held the prehearing conference. Both parties participated in the review of issues and witnesses for the scheduled hearing. Neither party indicated the District intended to file its own action, seek consolidation, and a continuance of the hearing.

On April 30, 2014, District filed a Request for Due Process Hearing (Second Case) naming Student. At the time of this Order, the District's complaint is being processed and has yet to be assigned a case number. With its complaint, District filed a motion to consolidate its Second Case with the Student's First Case.

On April 30, 2014, the parties also filed a joint stipulation regarding consolidation, whereby the parties jointly request consolidation of the First Case with the Second Case, agreeing that consolidation is appropriate and necessary to promote judicial economy and efficiency because the two matters involve common questions of law and fact.

Further, the parties' joint stipulation request to continue the hearing on the consolidated matters to June 9 through 12 and 16 through 19, 2014, with a new PHC of May 19, 2014.

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].) The question of consolidation is subject to the discretion of the administrative law judge.

A due process hearing must be held, and a decision rendered, within 45 days of receipt of the complaint, unless a continuance is granted for good cause. (Ed. Code, §§ 56502, subd. (f) & 56505, subd. (f)(1)(C)(3).)

Consolidation is discretionary, and is not something the parties can just stipulate to. Here, the joint request to consolidate is denied because the parties have not demonstrated the District's newly filed Second Case raises common issues of law or fact, or that consolidation would further the interests of judicial economy by saving time and preventing inconsistent rulings.

The District's Second Case concerns its offer of a free and appropriate public education (FAPE) at the April 22, 2014 triennial IEP. The Second Case says that Student disagrees with some portions of the April 22, 2014 FAPE offer and the District seeks an order finding the offer provides Student with FAPE, with the ability to implement without Parents' permission.

The Student's First Case concerns IEPs going back to 2011 up to its filing of January 2014. The question of whether the District's April 2014 offer is a FAPE is unrelated to the Student's allegations that District failed to provide a FAPE in the two years before January 2014. Therefore, there are no common issues and no danger of inconsistent rulings. Also, the mere assertion that the two cases may utilize some of the same witnesses does not substantiate consolidation or result in judicial economy. To the contrary, it only further complicates a matter in which student has raised a large number of issues with subparts.

Further, the filing of the District's Second Case and the joint request for consolidation, just three days before the commencement of hearing in the First Case, does not served judicial economy. The ALJ and parties' counsel have already participated in a prehearing conference for the First Case. The statement of issues has been finalized and the parties have been ordered to meet and confer on the hearing's witness schedule.

The IDEA intends for due process filings to be administered and resolved in a timely and judicious manner. Considering that the two cases do not have any issues in common, there is no good cause to further delay the hearing on the First Case.

ORDER

1. The joint request to consolidate is denied.
2. The joint request to continue the consolidated actions' prehearing conference and hearing is denied, as moot.

DATE: April 30, 2014

CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings