BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. MANTECA UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2013080296
MANTECA UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2013050805 ORDER GRANTING MOTION TO CONSOLIDATE

On May 21, 2013, the Manteca Unified School District (District) filed a Request for Due Process Hearing in OAH case number 2013050805 (First Case) naming Parent on behalf of Student as respondent. On May 30, 2013, the parties filed a joint request for continuance to agreed dates. Accordingly, by order dated May 30, 2013, OAH continued the prehearing conference to August 30, 2013, at 10:00 a.m., and the due process hearing in the First Case to September 10-11, 2013, and continuing day to day as needed at the discretion of the administrative law judge.

On August 7, 2013, Parent on behalf of Student (Student) filed a Request for Due Process Hearing in OAH case number 2013080296 (Second Case), naming the District as respondent and a motion to consolidate the First Case with the Second Case. District filed a notice of insufficiency on August 9, 2013. On August 13, 2013, OAH issued an order finding Student's complaint in the Second Case insufficient, permitting Student time to file an amended complaint and determining the motion to consolidate was moot. The order denying Student's motion to consolidate was without prejudice, should Student file an amended complaint in the Second Case. On August 16, 2013, Student filed an Amended Request for Due Process (amended complaint) in the Second Case.

On August 17, 2013, Student filed a Renewed Motion to Consolidate the First Case and the Second Case. On August 22, 2013, District filed a non-opposition to the motion to consolidate with supporting documentation in which the parties agreed that the hearing on the consolidated cases would take place on the agreed dates previously set in the First Case.

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].)

Here, the First Case and Second Case involve common questions of law or fact as to whether an individualized education program (IEP) dated February 15, 2013, and amended May 3, 2013, offered Student a free appropriate public education (FAPE) in the least restrictive environment. Both District's complaint and Student's amended complaint allege Student has not attended school since February 27, 2013. Student is 11 years old and eligible for special education under the categories of speech and language impairment and specific learning disability, and also has significant emotional and behavior issues that require non-public school (NPS) placement.

District contends it offered Student an appropriate NPS placement and services in an IEP dated February 15, 2013, and a different appropriate NPS placement in an IEP meeting held May 3, 2013, and seeks a determination that the NPS offered on May 3, 2013, was an appropriate placement. Student contends District has denied Student a FAPE since February 27, 2013, by failing to offer Student a safe, appropriate placement. Student further contends that the amended IEP fails to offer appropriate goals and objectives, that District has failed to provide necessary services and that District has denied Parent's right to participate in the selection of Student's placement.

Consolidation of these two matters would further the interests of judicial economy because the parties have requested and agreed to two days for hearing, there are several disputed factual issues involved and there will be substantial overlap in the witnesses and documentary evidence in both cases. Therefore, the motion to consolidate is granted.

However, the dates requested are within the 30-day resolution period that is required by law after the filing of Student's amended complaint. As a result, Student's hearing cannot be held on the requested dates unless the parties submit a joint written waiver of the mandatory resolution session. (Ed. Code, § 56501.5.) Accordingly, the consolidated matter will proceed on the dates currently set in the Second Case. Should the parties file a joint written waiver of the resolution session, the parties may request a continuance to agreed dates.

ORDER

1. Student's unopposed Motion to Consolidate is granted.
2. All dates previously set in OAH case number 2013050805 (First Case) are vacated.

3. OAH case number 2013080296 (Second Case) is designated as the primary case.

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 amended complaint in OAH case number 2013080296 (Second Case).

Dated: August 22, 2013

/s/

MARIAN H. TULLY
Administrative Law Judge
Office of Administrative Hearings