BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH CASE NO. 2013110088
v.	ORDER DENYING MOTION TO CONSOLIDATE AND DENYING MOTION TO AMEND
RIVERSIDE COUNTY PROBATION DEPARTMENT.	

On October 31, 2014, Student filed a Request for Due Process Hearing naming Riverside County Probation Department (County Probation), OAH case number 2013110088, and another Request for Due Process Hearing naming Riverside County Office of Education (Riverside COE), OAH case number 2013110094.

On January 15, 2014, Student filed a motion to consolidate the County Probation case with the Riverside COE case, a motion to amend, and a single proposed amended complaint naming both County Probation and Riverside COE.

On January 21, 2014, Riverside COE filed an objection on the grounds that the responsibilities of County Probation and Riverside COE are separate, and the legal and factual issues alleged against each respondent are separate and distinct.

On January 23, 2014, County Probation filed an objection on the ground that OAH does not have jurisdiction over County Probation for the purpose of education, County Probation is not an education provider, and Riverside COE and County Probation are not subject to the same statutory requirements. County Probation also contends that it would be unduly prejudiced because it was not a party in a third case between Student and Riverside COE involving similar legal and factual issues in which a Decision was issued on December 3, 2014. The Decision determined Riverside COE denied Student a free appropriate public education (FAPE) by failing to provide appropriate behavior supports, services, and placement.

For the reasons set forth below, the motion to consolidate OAH case numbers 2013110088 and 2013110094 is denied because the two matters involve separate and distinct legal and factual issues. Student's motion to amend is denied as moot because the proposed amended complaint presumes the matters have been consolidated and there is no consolidated case.

Consolidation

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 Count Probation case and the Riverside COE case do not involve common questions of law or fact. The complaint naming Riverside COE is concerned with whether Student is entitled to independent educational evaluations (IEE's) at public expense.[1] Special education law under the IDEA allows the parents of a child with a disability to request an IEE at public expense. Student seeks an order compelling Riverside COE to fund the IEE's requested. Certain particular procedures and conditions apply. (20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.502 (a)(1) (2006); Ed. Code, §§ 56329, subd. (b), 56506, subd.(c).) Student's claim against Riverside COE is governed by these procedures and conditions.

The issues set forth in the complaint naming the Probation Department do not include any claim for an IEE at public expense. At issue in the Probation Department case is whether County Probation was responsible for Student's education during the two years before the complaint was filed and whether County Probation denied Student a free appropriate public education (FAPE) by failing to provide appropriate services while Student was incarcerated. Student seeks compensatory services. Student's claim that County Probation is responsible for Student's education and denied Student a FAPE depends upon an entirely different set of codes and regulations than the codes and regulations applicable to public funding of IEE's. A public education agency involved in any decisions regarding a student may be involved in a due process hearing. (Ed. Code, § 56501, subd. (a).) A public education agency is defined as any public agency responsible for providing special education or related services. (Ed. Code, §§ 56500, 56028.5.) A "local educational agency" is generally responsible for providing a FAPE to those students with disabilities residing within its jurisdictional boundaries. (34 C.F.R. § 300.220(a) (2006);Ed. Code § 48200.) Education Code section 56026.3 defines "local educational agency" as "a school district, a county office of education, a charter school participating as a member of a special education local plan area, or a special education local plan area. FAPE consists of special education and related services that are available to the student at no charge to the parent or guardian, meet the State educational standards, include an appropriate school education in the State involved, and

[1] Student also alleges claims against both County Probation and RCOE under the American with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, and state civil rights laws. OAH does not have jurisdiction over claims based upon the American with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, or state civil rights laws, therefore, these claims are not addressed in this order.

conform to the child's IEP. (20 U.S.C. § 1401(9).) "Special education" is defined as specially designed instruction, at no cost to parents, to meet the unique needs of the student. (20 U.S.C. § 1401(29).) The legal issues presented in the two cases are not the same and do not overlap.

Consolidation does not further the interests of judicial economy. The facts required to meet the burden of proof as to the claim against County Probation are different from the facts necessary to meet the burden of proof as to the claim against Riverside COE. Even if some of the same witnesses might be called, or some evidence might be relevant for different reasons in both cases, there are no common questions of law or fact because the issues are separate and distinct, the responsibilities of each respondent to Student are different, and the remedies requested are unrelated.

Amendment

Student's motion to amend includes a proposed amended complaint naming both respondents. The proposed amended complaint states the same claims as to County Probation and Riverside COE. The proposed amended complaint contains an additional allegation that respondents jointly failed to provide access to Student's classroom for educational evaluations. Since the motion to consolidate is denied, there is no pending action including both respondents and the motion to amend is denied as moot.

ORDER

1. Student's Motion to Consolidate is denied.
2. Student's Motion to Amend is denied.
3. All dates previously set for hearing in this matter shall remain as scheduled.

Dated: January 24, 2014

/s/
MARIAN H. TULLY
Administrative Law Judge
Office of Administrative Hearings