BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS ON BEHALF OF STUDENT, v. LARKSPUR-CORTE MADERA SCHOOL DISTRICT.	OAH CASE NO. 2013110120 ORDER DENYING MOTION TO CONSOLIDATE

On October 30, 2013, Parents, on behalf of Student (Student), filed a Request for Due Process Hearing (complaint) against the Larkspur-Corte Madera School District (Larkspur). The Office of Administrative Hearings (OAH) designated the complaint as Case Number 2013110120 (First Case).

On February 19, 2014, Student filed a Request for Due Process Hearing (second complaint) against the Tamalpais Union High School District (Tamalpais). OAH designated Student's second complaint as Case Number 2014020752 (Second Case).

On February 19, 2014, Student filed a motion to consolidate the two cases, contending that the two cases present similar or same issues and that both involve alleged denial of a free appropriate public education (FAPE) to Student by the two districts. On February 24, Ms. Jan E. Tomsky, attorney for both Larkspur and Tamalpais, filed an opposition to Student's motion to consolidate. On February 25, 2014, Student filed a response to the opposition. As discussed below, the request to consolidate the cases is denied.

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

In the First Case, Student alleges that Larkspur denied him a FAPE by failing to identify, acknowledge, and address the impact of his disability when conducting its assessments and developing Student's individualized educational program (IEP) during the 2011-2012 school year. In addition, Student alleges that Larkspur-Corte failed to offer him a FAPE by failing to place him at home, and residentially during the 2011-2012 school year as requested by his parents.

Student's Second Case alleges that Tamalpais denied him a FAPE by failing to identify, acknowledge, and address the impact of his disability when reviewing his records, by placing him on "an administrative basis" for the 2013-2014 school year, and for arbitrarily ruling out an immediate need for residential placement in order to meet Student's educational needs . Also, Student alleges that Tamalpais denied him a FAPE by failing to evaluate him, and by failing to make a timely or appropriate offer of FAPE to him during the 2013-2014 school year.

Student's motion does not demonstrate good cause for consolidation. While the two cases filed by Student contain similar issues, the issues raised in the two cases are different. For example, Student's case against Larkspur is about the appropriateness of Larkspur's assessments of Student and its refusal to agree to placement requested by parents during the 2011-2012 school year. However, in the case against Tamalpais, the alleged denial of FAPE involves the allegations that Tamalpais: 1) failed to assess Student; 2) failed to consider Student's needs before ruling out residential placement for him; and 3) failed to make a timely and appropriate offer of placement and services to Student during the 2013-2014 school year.

The two cases involve two different respondents and cover different time periods. The cases would present questions of law and facts, and analysis that would be different from one case to the other. While Student's contention is correct that his witnesses such as parents, experts and staff from the placements will be the same, the two districts' witnesses do not overlap. Thus, the witnesses in the cases would be different and the issues and time period are distinct enough that consolidation is not warranted.

Accordingly, consolidation would not further the interests of judicial economy because the issues raised in both cases are dissimilar and evaluating and addressing the questions raised in the two cases would involve different evidence and witnesses. Analyzing and resolving the issues would involve different, though similar, questions of law and facts. Therefore, consolidating the cases will not promote judicial economy. Accordingly, Student's motion to consolidate is denied.

ORDER

1. Student's motion to consolidate is denied.

2. All dates will remain on calendar in both matters as previously set.

DATE: March 7, 2014

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings