BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS ON BEHALF OF STUDENT, v. LODI UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2013060287 ORDER DENYING MOTION TO CONSOLIDATE

On June 4, 2013, Parents on behalf of Student (Student) filed a Request for Due Process Hearing in OAH case number 2013060287 (First Case), naming the Lodi Unified School District (District).

On June 27, 2013, Student filed a Request for Fair Hearing in OAH case number 2013061092 (Second Case), naming the Valley Mountain Regional Center (VMRC).

On July 10, 2013, Student filed a Motion to Consolidate the First Case with the Second Case.

On July 15, 2013, the District filed an objection to consolidation on the grounds that First Case and the Second Case do not share common questions of law, require different legal analysis and have different respondents. On July 16, 2013, the VMRC filed an objection to consolidation based upon similar reasons.

LEGAL ANALYSIS

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].)

Special education due process hearing procedures extend to the parent or guardian, to the student in certain circumstances, and to "the public agency involved in any decisions regarding a pupil." (Ed. Code, § 56501, subd. (a).) A "public agency" is defined as "a school district, county office of education, special education local plan area, . . . or any other public

agency . . .providing special education or related services to individuals with exceptional needs." (Ed. Code, §§ 56500 and 56028.5.)

Under the Individuals with Disabilities Education Act (IDEA), the State Educational Agency has the responsibility for the general supervision and implementation of the Act. (20 U.S.C. § 1412(a)(11)(A); 34 C.F.R. § 300.149(a)(2006).) This responsibility includes ensuring that a free appropriate public education (FAPE) is available to all children with disabilities in the mandated age ranges within the state. (20 U.S.C. § 1412(a)(1)(A); 34 C.F.R. § 300.101(a)(2006).) Generally, a FAPE is made available through a Local Educational Agency (LEA) within the state. (20 U.S.C. § 1412(a)(12)(A); *Letter to Covall*, 48 IDELR 106 (OSEP Dec. 2006).) In this case, the District is the LEA within the meaning of these provisions.

Regional Centers provide services under the Lanterman Act (Welf. & Inst.Code, §§ 4400 et seq., 4512) for developmentally disabled infants, toddlers, children and adults who qualify with specified disabilities. The services which are provided by Regional Centers are separate from those provided under the IDEA. Regional Centers provide daily living services and supports to persons with developmental disabilities, unrelated to the provision of a FAPE.

DISCUSSION

Here, Student is a 10 year-old-boy who has been receiving special education and related services from the District under the handicapping condition of autism. Student is also a client of the VMRC. In both the First Case and the Second Case, Student requests placement in a specific residential treatment center in Kansas. Student asserts that due to the commonality of the remedy sought, the First Case and the Second case should be consolidated. Student also asserts that the First Case and the Second Case involve the same witnesses and should therefore be consolidated to further the interests of judicial economy by saving time and witness costs.

The District and VMRC object to consolidation because the First Case and the Second Case do not involve a common question of law or fact. Specifically, Student's complaint against the District arises from Individualized Education Program's (IEP's) dated July 26, 2011, May 25, 2012, and May 23, 2013. Student alleges four issues, and 20 sub-issues, against the District which relate to these IEP's. In each of these issues and respective sub-issues, Student asserts he was denied a FAPE. However, in this matter the District, as the LEA, has the sole responsibility for providing Student's IEP's and a FAPE. The VMRC does not share this responsibility and cannot be held accountable for special education and related services which were provided to Student pursuant to the IEP process. (20 U.S.C. § 1412(a)(1)(A); 34 C.F.R. § 300.101(a) (2006).) Thus, the FAPE claims against the District do not arise from the same transaction or occurrence which form the basis of Student's claims against the VRMC. Consequently, the First Case and the Second Case do not share a common question of fact, e.g. whether the IEP's constitute a FAPE offer for Student.

In addition, Student's claims against the VMRC fall under the Lanterman Act (Welf. & Inst. Code, §§ 4400 et seq., 4512), and apply an entirely different legal standard than is applicable under the IDEA, which govern the District's obligations to Student. Consequently, the First Case and Second Case do not share a common question of law.

Finally, although Student contends that he will be calling the same witnesses for the First Case and the Second Case, he failed to show that the witnesses for the District in the First Case and for the VMRC in the Second Case would be the same. Rather, the District and VMRC are likely to call different witnesses because the First Case and the Second Case involve different factual circumstances and require different legal analysis. Moreover, if the cases were consolidated, Student's witnesses would be required to testify for a longer period of time to address separate facts and contrasting legal standards. Therefore, consolidation of the First Case and the Second Case does not further the interests of judicial economy.

In sum, the First Case and the Second Case do not involve a common question of law or fact, or the same parties, and it does not further the interests of judicial economy to consolidate these cases. Student's request to consolidate is therefore denied.

ORDER

1. Student's Motion to Consolidate is denied.
2. All hearing dates for OAH Case Number 2013060287 (First Case) and for OAH Case Number 2013061092 (Second Case) shall remain as presently set, unless otherwise ordered.

Dated: July 18, 2013

/s/

PAUL H. KAMOROFF
Administrative Law Judge
Office of Administrative Hearings