BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. IRVINE UNIFIED SCHOOL DISTRICT,	OAH Case No. 2017030696
IRVINE UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2017031348 ORDER DENYING MOTION TO CONSOLIDATE AND DENYING MOTION TO CONTINUE DUE PROCESS HEARING RELATED OAH Case No. 2017041158

On March 13, 2017, Student filed with the Office of Administrative Hearings a Request for Due Process Hearing in OAH case number 2017030696 (Student's Case), naming Irvine Unified School District.

On March 23, 2017, District filed a Request for Due Process Hearing in OAH case number 2017031348 (District's First Case), naming Student.

On April 6, 2017, the parties filed a Joint Motion to Consolidate Student's Case with District's First Case. On April 12, 2017, OAH consolidated Student's Case with District's First Case.

The due process hearing in the consolidated case is scheduled to begin on May 2, 2017.

On April 25, 2017, District filed a Request for Due Process Hearing in OAH case number 2017041158 (District's Second Case), naming Student.

Also on April 25, 2017, District filed a Motion to Consolidate District's Second Case with the previously consolidated case and to continue the due process hearing date set in the previously consolidated case to the new dates set in District's Second Case.

As of the time this Order was issued, Student had not yet filed a response to the motion.

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].)

An amended complaint may be filed when either (a) the other party consents in writing and is given the opportunity to resolve the complaint through a resolution session, or (b) the hearing officer grants permission, provided the hearing officer may grant such permission at any time more than five (5) days prior to the due process hearing. (20 U.S.C. § 1415(c)(2)(E)(i).) The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. §1415(c)(2)(E)(ii).)

The allegations of the complaint in District's Second Case are identical to the allegations of the complaint in District's First Case through the first quarter of the fifth page. District's Second Case adds allegations regarding events that occurred on and after March 2, 2017. Here, District's Second Case seeks, as stated in District's motion to consolidate, "a determination that an April 21, 2017, [individualized education program] made a [free appropriate public education] available to Student, an order permitting evaluation of Student under a March 31, 2017, assessment plan, and an order declaring that Student is not entitled to a FAPE if his parents refuse to make him available for assessment under the March 31, 2017, assessment plan." District seeks to litigate an assessment plan and IEP that were created after the Student filed his case and after District filed its first case.

Through the filing of a new case and motion to consolidate and continue, District seeks to obtain what would ordinarily be pursued through an amendment of its first complaint: stating additional claims against a party and a restarting the applicable timelines for a due process hearing. However, District did not file its second case until the fifth day before the due process hearing. Student has not consented to the filing of an amendment. Further, OAH would deny District permission to amend its complaint at this time, because a motion to amend granted after April 24, 2017, would be untimely. (20 U.S.C. § 1415(c)(2)(E)(i).) District did not file a complaint stating its additional claims against Student until April 25, 2017. District cannot defeat federal statutes regarding amending a complaint by stating its additional claims against Student in a "new" case and then seeking to consolidate the new case with the old one.

ORDER

1. District's Motion to Consolidate is denied.

2. District's Motion to Continue is denied. All dates previously set for hearing in this matter shall remain as scheduled.

IT IS SO ORDERED.

DATE: April 27, 2017

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Kara Hatfield
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KARA HATFIELD
Administrative Law Judge
Office of Administrative Hearings