BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENTS ON BEHALF OF STUDENT, v. DAVIS JOINT UNIFIED SCHOOL DISTRICT.	OAH Case No. 2015070871 (PRIMARY CASE)
DAVIS JOINT UNIFIED SCHOOL DISTRICT, v. PARENTS ON BEHALF OF STUDENT.	OAH Case No. 2015090585 (SECONDARY CASE) ORDER GRANTING DISTRICT'S MOTION TO CONSOLIDATE

On July 6, 2015, Parents on behalf of Student filed a Request for Due Process Hearing in OAH case number 2015070871 (Student's Case), naming the Davis Joint Unified School District.

On September 15, 2015, District filed a Request for Due Process Hearing in OAH case number 2015090585 (District's Case), naming Student. District concurrently filed a motion to consolidate its case with Student's case and to continue the consolidated matters to the dates that would be scheduled by the Office of Administrative Hearings for District's case.

Student filed an opposition to District's motion on September 18, 2015.[1]

[1] In her opposition, Student requested that OAH postpone ruling on District's motion to consolidate until after OAH rules on Student's pending motion to dismiss District's case. However, District's opposition to the motion to dismiss is not due until September 23, 2015. Since hearing on Student's case is presently scheduled to begin on September 28, 2015, OAH declines to postpone ruling on District's motion to consolidate.

MOTION TO CONSOLIDATE

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].)

Student presently raises two issues for hearing.[2] She contends that District denied her a free appropriate public education for the 2015-2016 school year by: a) predetermining its offer of behavioral supports and services in its June 2, 2015 individualized educational program offer, as amended on July 3, 2015; and b) offering behavioral support and services that were not based upon the recommendations of an IEP team member who was knowledgeable about Student's behavioral program. Among other things, Student requests as a remedy an order that District must implement the July 31, 2015 behavior program recommendations made by the non-public agency presently providing behavior support to her.

District's request for due process raises three issues. Issue one asks OAH to determine if District's June 2, 2015 IEP offer, as clarified on July 3, 2015, and August 19, 2015, was reasonably calculated to provide Student with meaningful educational benefit. Issue two asks OAH to determine if District did consider services offered by Student's present non-public agency in formulating its IEP offer and did provide Student's parents with a meaningful opportunity to participate in the August 28, 2015 IEP team meeting. Issue three asks OAH to determine if District's August 28, 2015 IEP offer was reasonably calculated to provide Student with educational benefit.

District's motion to consolidate contends that its issues are nearly identical to those raised by Student. District contends that both cases will concern many of the same witnesses, evidence, and factual disputes. District therefore asserts that consolidation of the two cases is appropriate.

Student disagrees. Although she acknowledges that the parties are the same in both cases and that there would be some cross-over of witnesses, Student contends that the issues are not "nearly identical." She asserts that the testimony of the witness will not be similar and that consolidating the matter will unnecessarily expand her case and delay resolution of it. Student points to the fact that her case only concerns District's June 2, 2015 IEP offer, as amended on July 3, 2015, while District's case raises issues involving IEP offers made on two dates in August 2015.

[2] At the prehearing conference held September 18, 2015, Student withdrew several issues originally raised in her request for due process.

Student reads too narrowly the legal criteria for consolidating cases. There is no requirement that every issue of each complaint be identical. Here, both complaints involve whether IEP offers made by District in June and July 2015 offered Student a FAPE. Both cases specifically concern whether District offered appropriate behavior services to Student, and whether District considered input from the non-public agency presently providing behavior support to Student. Although District's case also addresses offers it made in August 2015, District's complaint asserts that those offers were continuations of its June 2, 2015 and July 3, 2015 offers. Even if the August 2015 offers are determined to be a distinct IEP process, the issues involving the June and July 2015 IEP process are raised by both parties' complaints. The issues, witnesses, and evidence involving the June and July 2015 IEP offers will be similar. Judicial economy will therefore be served by consolidating the cases. District's motion to consolidate is granted.

MOTION TO CONTINUE

A due process hearing must be held, and a decision rendered, within 45 days of receipt of the complaint, unless a continuance is granted for good cause. (Ed. Code, §§ 56502, subd. (f) & 56505, subd. (f)(1)(C)(3).)

In this case, although District has moved to continue the matter if OAH granted its motion to consolidate, District is not actually moving for a continuance. Rather, it has asked to have the consolidated matter heard on the dates OAH has scheduled for District's case.

Student has objected not only to the motion to consolidate the cases but also to District's request to move the hearing dates back. Student points out that her case has already been continued once at District's request. Student opposes moving the hearing dates again as she wants a speedy resolution of her case.

Given that the issues in the two cases are in fact similar, there is no reason to move the hearing dates. The issues involve the same series of IEP team meetings and IEP offers, and should not require additional hearing preparation time. Therefore, District's request to have the consolidated cases heard on the dates presently scheduled in its case is denied. Student's case is deemed the primary case, and the hearing on the consolidated matter shall proceed on the dates presently scheduled in Student's case.

ORDER

1. District's Motion to Consolidate is granted.
2. All dates previously set in OAH Case Number 2015090585 [District's Case] are vacated.
3. The 45-day timeline for issuance of the decision in the consolidated cases shall be based on the date of the filing of the complaint in OAH Case Number 2015070871 [Student's Case].

4. This consolidated matter shall proceed to due process hearing on the dates presently scheduled in Student's case.

DATE: September 22, 2015

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings