BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: GARDEN GROVE UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2016030420 ORDER DENYING MOTION TO CONSOLIDATE

On March 7, 2016, District filed with the Office of Administrative Hearings a Request for Due Process Hearing in OAH Case Number 2016030420, naming Student.

On March 28, 2016, a Prehearing Conference took place between the undersigned and the representatives of the parties. At that time, Student's request to continue the matter was opposed and denied.

On March 30, 2016, the parties made a joint request for continuance on condition the hearing would be scheduled in April 2016. The request for continuance was denied, as first available dates for hearing were being scheduled for mid-May 2015 and thereafter.

After close of business on March 30, 2016, Student filed a Request for Due Process Hearing in OAH Case Number 2016040119, naming District.

After close of business on March 30, 2016, Student filed a Motion to Consolidate District's Case Number 2016030420 with Student's Case Number 2016040119, and to continue the due process hearing date set in Student's Case Number 2016030420.

On April 1, 2016, District filed an objection to consolidation on the ground that (1) Student waited to the eve of hearing (three working days) to file her request for due process hearing; (2) time is of the essence for determination of District's issues, as they involve a proposed change in placement for the 2016-2017 school year; and (3) Student's issue requesting an independent education evaluation in developmental optometry is not related to District's issues..

On April 1, 2016, Student filed a response to District's opposition contending the issues should be consolidated (1) to avoid inconsistent decisions; and, in essence, it would be premature to determine District's issues prior to having IEE assessments. Further, Student also indicated time was not of the essence, as Student could invoke her stay put rights, pending an appeal, if needed.

APPLICABLE LAW AND DISCUSSION

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, District's case and Student's case do not involve a common question of law or fact. Specifically, District's issues address whether its February 9, 2016 offer of placement for the 2016-2017 school year at the Adult Transition Program is appropriate; and whether its February 9, 2016 offer of certificate of completion track is appropriate. Student's issue is whether she is entitled to an independent education assessment at public expense for developmental optometry.

Neither Student's complaint nor his motion for consolidation and opposition to District's response, provide a factual connection between the two cases, or indicate in argument how the two cases are linked.

Student contends that District's issues cannot be appropriately determined (or the case settled) without receipt of the independent education evaluation. If accepting Student's logic, even upon consolidation, District's issues could not be appropriately adjudicated until after the results of the assessment were available. This argument is without merit in light of the "snapshot rule." (*Adams v. State of Oregon,* 195 F.3d 1141 (9th Cir. 1999.). Further, as there is no connection between the issues, there is no danger of inconsistent rulings.

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 her own arguments, Student acknowledges that at best, she was provided prior written notice of District's denial of her request for an independent education evaluation in November 2015. Thusly, Student had five months to request a due process hearing, and instead chose to wait until March 28, 2016, during the Prehearing Conference, one week before hearing, to contemplate filing her own complaint. Such delay does not constitute good cause for delay in resolving District's issues.

ORDER

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

IT IS SO ORDERED.

DATE: April 1, 2016

/s/

JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings