BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. LOWELL JOINT SCHOOL DISTRICT,	OAH CASE NO. 2013040714
LOWELL JOINT SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2013080346 ORDER GRANTING MOTION TO CONSOLIDATE

On April 15, 2013, Parent on behalf of Student (Student) filed a Request for Due Process Hearing (complaint) in OAH case number 2013040714 (First Case), naming Lowell Joint School District (District). The complaint in the First Case generally concerned an individualized education program (IEP) team meeting of March 2013.

On July 31, 2013, Student filed a motion to amend the complaint, seeking to add issues related to a June 3, 2013 IEP. On August 8, 2013, District notified OAH that it did not oppose the amendment. On August 12, 2013, OAH granted Student's motion and ordered the Student's amended complaint filed. OAH subsequently issued a new scheduling order, setting mediation for September 18, 2013, the prehearing conference for September 30, 2013, and hearing for October 8, 2013.

On August 8, 2013, District filed a Request for Due Process Hearing in OAH case number 2013080346 (Second Case), naming Student. The sole issue in District's complaint is whether the District's May 2013 psychoeducational assessment, which was reviewed at the Student's June 3, 2013 IEP, was appropriate and in accordance with the requirements of state and federal law. District seeks an OAH order it is not obligated to fund an independent education evaluation, as Student requested. OAH issued a scheduling order, setting the prehearing conference in the Second Case for August 30, 2013, and hearing for September 5, 2013.

On August 20, 2013, Student filed a Motion to Consolidate the First Case with the Second Case. On August 22, 2013, District filed an opposition to consolidation; Student filed a reply to opposition on August 23, 2013.

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].)

Discussion

Student's complaint addressed the Student's March 2013 IEP. The pleadings indicate that District thereafter conducted a psychoeducational assessment that was reviewed at Student's June 2013 IEP. Student disagreed with the assessment and requested an IEE, to be funded by the District. The District denied the request and filed the Second Case on August 8, 2013.

Student's July 31, 2013 motion to amend sought to add the June 2013 IEP to the complaint; District stated it did not oppose. Accordingly, the First Case includes issues related to the District's May 2013 assessment, which District relied upon in formulating its June 2013 IEP offer and with which the Student disagrees. The May 2013 psychoeducational assessment, which District seeks to have declared legally appropriate in the Second Case, will also be addressed in Student's First Case.

In the motion to consolidate, Student states that the same witnesses would testify regarding the May 2013 psychoeducational assessment in both cases. District opposes, claiming that its Second Case is a very narrow issue and that the two cases do not have common issues of law and fact.

Though District may merely seek a declaration of the assessment's appropriateness, the assessment will be addressed in the First Case, no matter the outcome of District's Second Case. Even if the assessment is found legally appropriate in the Second Case, Student intends to still put on evidence and testimony that the assessment's conclusions and recommendations were incorrect. Much of this evidence and testimony will involve the same documents and witnesses that would testify regarding the assessment's legal appropriateness in the Second Case. Accordingly, the two cases involve the same witnesses and common factual contentions.

Further, District is not compromised by having its case consolidated with Student's First Case. The only remedy District seeks is a declaration that it does not have to fund an IEE. District is not prejudiced by any delay.

Finally, District will also benefit from consolidation because it will not be required to participate in two hearings, regarding the same student, similar evidence, and common

factual issues. The First Case and Second Case involve a common question of law or fact. The consolidation of the matters furthers the interests of judicial economy by saving time and resources. Consolidation is appropriate.

ORDER

1. Student's Motion to Consolidate is granted.
2. All dates previously set in OAH Case Number 2013080346 [Second 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 2013040714 [First Case].
4. All further pleadings in these consolidated cases shall be filed in the First Case.
5. The First Case's presently scheduled mediation, prehearing conference, and hearing dates apply to these consolidated cases.

Dated: August 26, 2013

/s/
CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings