BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. SPENCER VALLEY ELEMENTRY SCHOOL DISTRICT,	OAH Case No. 2014030842
SPENCER VALLEY ELEMENTRY SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2014030046 ORDER GRANTING MOTION TO CONSOLIDATE AND DENYING REQUEST TO ADVANCE THE HEARING TIMELINE

On March 3, 2014, the Spencer Valley Elementary School District (Spencer Valley) filed a Request for Due Process Hearing in the Office of Administrative Hearings (OAH) case number 2014030046 (First Case) naming Student.

On March 21, 2014, Student filed a Request for Due Process Hearing in OAH case number 2014030842 (Second Case) naming Spencer Valley.

On March 25, 2014, Student filed a motion to consolidate the two cases contending that the cases involve common questions of law and fact. On March 26, 2014, Spencer Valley filed its notice of non-opposition to the motion, but requested that the dates in the First Case be maintained. OAH deems Spencer Valley's request to maintain the hearing dates in the First Case a request to advance the hearing timeline for the consolidated matters.

On March 26, 2014, Student filed his opposition to Spencer Valley's request to advance the timeline, arguing the Student has not had a chance to participate in a resolution session, and has not agreed to waive it. As discussed below, Student's motion to consolidate is granted, and Spencer Valley's request to advance the timeline for the consolidated matters is denied.

APPLICABLE LAW

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 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); Code of Civ. Proc., § 1048, subd. (a).) The California Code of Civil Procedure section 1048, subdivision (a), applies the same standard to the consolidation of civil cases.

Resolution Session

A school district must convene a meeting to discuss the issues raised in a due process complaint in order to attempt to resolve the dispute. (34 C.F.R. § 300.510 (a)(1), (2); Ed. Code, § 56501.5, subd. (a).) This meeting is commonly known as a resolution session. A resolution session need not be held if the parent and school district agree in writing to waive it (Id. at § 300.510 (a)(3)(i); § 56501.5, subd. (b)) or if the parent and school district agree to use mediation instead of a resolution session (Id. at § 300.510 (a)(3)(ii); § 45401.5, subd. (b)). If the parties agree to waive the resolution session, the 45-day timeline for a due process hearing begins the day after the waiver. (Id. at § 300.510(c)(1); 56501.5, subd. (d)(1).) However, the timeline does not automatically begin if the parties agree to use mediation instead of a resolution session. (Id. at § 300.510(c); also see 56501.5, subd. (d).)

DISCUSSION

The First Case raises eight various issues including whether Spencer Valley offered Student a free appropriate education (FAPE) in the least restrictive environment through its October 25, 2013 individualized education program (IEP), such that the IEP may be implemented without parental consent. Also, the case raises the issues of whether Spencer Valley fulfilled its FAPE obligations to Student by timely completing its triennial evaluation of Student, by timely developing and offering Student written IEP offers, by appropriately implementing Student's IEP goals, and by providing supports and services to Student. Finally, the First Case raises the issue of whether Spencer Valley timely and appropriately scheduled IEP team meetings when requested by parents. The Second Case raises only one issue under the Individuals with Disabilities in Education Act and OAH's jurisdiction. The issue is whether Spencer Valley's October 25, 2013 proposed IEP provides Student with a FAPE in the least restrictive environment.

The two cases involve the same parties, and cover same or similar issues and timelines. Both present common questions of law and fact and relate to Student's right to a FAPE and Spencer Valley's obligations to provide and ensure that Student receives a FAPE. Consolidation of these cases will further the interests of judicial economy because the issues raised in both cases involve Student's unique educational needs and the question of whether Spencer Valley met its procedural and substantive obligations to provide Student with a FAPE. Evaluating and addressing the issues raised would involve the same evidence and witnesses, and the analysis and resolution of the same questions of law. Therefore, consolidating the cases will promote judicial economy, and accordingly, consolidation is granted.

Request to Advance Hearing Dates

When the parties agree in writing to waive a resolution session, OAH will advance the timeline by moving forward the dates for mediation, prehearing conference, and hearing in order to accommodate the parties' request to expedite the beginning of the 45-day timeline for hearing. In these matters however, there is no agreement between the parties to waive the resolution session and use mediation in lieu of the resolution session. There is no agreement to advance the timeline for hearing in the consolidated matters. Therefore, Spencer Valley's request to maintain the currently set hearing dates in the First Case and/or advance the timeline for the consolidated matters does not meet the procedural requirements for such a request.

Accordingly, the request to maintain the currently set hearing dates in the First Case and thus advance the timeline for the consolidated matters is denied. The timeline for issuance of the decision in the consolidated cases shall be based on the date of the filing of the complaint in the Second Case and all dates currently set in the First Case shall be vacated.

ORDER

1. Student's Motion to Consolidate is granted.

2. All dates previously set in OAH Case Number 2014030046 (First Case) are vacated and Spencer Valley's request to maintain those dates is denied without prejudice.

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 2014030842 (Second Case)

DATE: March 27, 2014

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings