BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: SWEETWATER UNION HIGH SCHOOL DISTRICT, v. PARENTS ON BEHALF OF STUDENT,	OAH Case No. 2016090871
PARENTS ON BEHALF OF STUDENT, v. SWEETWATER UNION HIGH SCHOOL DISTRICT.	OAH Case No. 2016080950 ORDER GRANTING DISTRICT'S MOTION TO CONSOLIDATE

PROCEDURAL BACKGROUND

On August 22, 2016, Parents on behalf of Student filed a request for due process (complaint) with the Office of Administrative Hearings in OAH case number 2016080950 (Student's case), naming the Sweetwater Union High School District. Student's complaint alleges that District violated Parents' rights under the Individuals with Disabilities Education Act by failing to provide at District's expense the various independent educational evaluations Parents requested, or by failing timely to file to defend the validity of its own evaluation or decision not to conduct a full triennial evaluation.

District filed a complaint on September 26, 2016, in OAH case number 2016090871 (District's case) naming Parents on behalf of Student. District raised, in effect, three issues: 1) Was it required to fund the independent evaluations Parents requested or file to defend its evaluation, where District allegedly had never conducted the evaluations in question and Student now disagrees with the decision that a triennial evaluation was not warranted; 2) In the alternative, was District's decision not to conduct a full triennial evaluation appropriate such that District is not required to fund the independent evaluations Parents have requested; and, 3) May District assess Student without Parents' consent pursuant to its August 17, 2016 evaluation plan?

On the same day it filed its complaint, District filed a motion to consolidate its case with Student's case. On September 27, 2016, Student filed a response to District's motion. Student agreed to the consolidation if his case was deemed the primary case such that the consolidate case would proceed to hearing on the dates presently set in his case. Student opposed consolidation if the consolidated hearing would be set on the dates scheduled for District's case. Student asserted that under the IDEA and state education law he is entitled to speedy resolution of his due process request and opposed any action that would delay his hearing.

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, Student's case and District's case both raise the issue of whether District was required to either fund the independent evaluations Parents requested, or to file for due process on whether it was required to fund them. Student does not disagree that there are common questions of law and/or fact between his case and District's. Student opposes the consolidation if the result is any delay in hearing the issue he has presented.

Student's case is presently scheduled for a prehearing conference on October 10, 2016, with the due process hearing scheduled to begin on October 18, 2016. The prehearing conference in District's case is scheduled for October 17, 2016, with the hearing scheduled to begin on October 25, 2016. Consolidation of the cases with designation of District's case as the primary case will result in only a one-week delay in hearing the issues presented in Student's complaint. Although Student contends that he will be prejudiced by this delay, his response fails to demonstrate any specificity as to how such a brief delay would prejudice either him or his parents. Given the commonality of issues, the fact that similar witnesses will be called in both cases and similar evidence submitted, holding separate hearings on consecutive weeks is not warranted. Consolidating the cases thus furthers the interests of judicial economy without resulting in any substantial prejudice to Parents or Student. District's motion to consolidate is therefore granted, and District's case will be designated the primary case.

ORDER

1. District's Motion to Consolidate is granted.

2. All dates previously set in OAH Case number 2016080950 [Student'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 2016090871 [District's Case].
4. The mediation in the consolidated matter will be held on October 11, 2016. The telephonic prehearing conference will be held on October 17, 2016, at 3:00 p.m. The due process hearing will be held beginning on October 25, 2016, and continuing day to day, Monday through Thursday, at the discretion of the Administrative Law Judge.

DATE: October 4, 2016

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Darrell Lepkowsky
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DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings