BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017030577
v.	ORDER DENYING MOTION TO CONSOLIDATE AND DENYING MOTION TO CONTINUE
TRACY UNIFIED SCHOOL DISTRICT.	

On December 27, 2016, Tracy Unified School District, filed with the Office of Administrative Hearings a request for mediation and due process hearing in OAH case number 2017010024 (District's Case), naming Student. This case has been continued twice, and is currently set for a due process hearing to begin April 5, 2017.

On March 13, 2017, Student filed a request for mediation and due process hearing in OAH case number 2017030577 (Student's Case), naming Tracy. A scheduling order was issued on the same date assigning a due process hearing date of May 9, 2017, for that case.

On March 20, 2017, Student filed a motion to consolidate Student's Case with District's Case. Student also asked to continue the hearing date of May 9, 2017, set for Student's Case, claiming Student's counsel had a conflict on that date. Student asked that this request for continuance be addressed at a prehearing conference for District's Case on March 24, 2017. On March 21, 2017, Tracy filed a non-opposition to the motion for consolidation, but did not respond to the motion to continue.

LEGAL AUTHORITY

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].)

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).)

DISCUSSION

Consolidation

Tracy's request for due process asks that its psychoeducational assessment of Student conducted in the fall of 2016 be found legally complaint. Student's request for due process contains 10 stated issues dating back to the 2009-2010 school year.[1] Only the 10th issue concerns Student's request for an independent educational evaluation following completion of Tracy's assessments in the fall of 2016. Student claims that Tracy's request for due process concerning its psychoeducational evaluation was untimely. Student also claims that Tracy did not assess Student in all areas of suspected disability, specifically auditory processing. Student claims that Tracy wrongfully denied Student an independent educational evaluation in the area of central auditory processing.

In order to determine whether Tracy's psychoeducational assessment was legally compliant, the ALJ conducting the hearing must determine, among other things, whether Tracy acted in a timely manner in response to Parents' request for an independent educational evaluation in this area. Therefore, the first part of Student's 10th issue will be addressed in the hearing currently set for April 5, 2017, in District's Case, OAH Case No. 2017010056. If the psychoeducational assessment is not found to be legally compliant, Tracy can be ordered to fund an independent psychoeducational assessment. Therefore, a separate hearing for this portion of Student's 10th issue is not necessary. Further, if the motion for consolidation is granted, the hearing in District's Case will be delayed once again. The second part of Student's Issue 10 can be addressed in the separate hearing that will address all of the claims raised in Student's Case. Accordingly, Student's motion for consolidation is denied.

Continuance

Since Student's motion to consolidate her case with District's case is denied, Student's request that OAH rule on the motion to continue the case during the PHC of March 24, 2017, in District's Case, is denied and will be addressed herein. Student claims that her attorney has a conflict on the date currently set for the due process hearing in Student's Case, but this is not supported by a sworn declaration that provides sufficient information concerning the calendaring conflict to establish good cause for a continuance. Further, Student has not demonstrated that there has been any attempt to meet and confer with Tracy's counsel to find a mutually agreeable date to which the due process hearing in Student's Case can be continued. Student's motion to continue the hearing date of May 9, 2017, is denied for lack of good cause.

[1] No determination is made at this time as to whether Student has established grounds pursuant to Education Code section 56505, subdivision (l), for extending the two-year statute of limitations for filing a request for due process with OAH.

ORDER

1. Student's motion to consolidate Student's Case (OAH Case No. 2017030577) with District's Case (OAH Case No. 2016010056) is denied.

2. Student's motion to continue the due process hearing date of May 9, 2017, currently set in Student's Case (OAH Case No. 2017030577) is denied. All dates previously set for hearing in this matter shall remain as scheduled.

IT IS SO ORDERED.

DATE: March 23, 2017

DocuSigned by:
Rebecca Freie
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REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings