BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS OF:

PARENT ON BEHALF OF STUDENT,

v.

LOMPOC UNIFIED SCHOOL DISTRICT,

OAH CASE NUMBER 2019040859

and

LOMPOC UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT,

OAH CASE NUMBER 2019070446

ORDER GRANTING IN PART AND DENYING IN PART MOTION TO CONSOLIDATE

On April 18, 2019, Parent on behalf of Student filed with the Office of Administrative Hearings, commonly referred to as OAH, a Request for Due Process

Hearing in OAH case number 2019040859, Student's First Case, naming Lompoc Unified School District. A Request for Due Process Hearing is also referred to as a complaint.

On June 6, 2019, OAH granted Lompoc Unified's motion to continue Student's First Case.

On July 3, 2019, Parent on behalf of Student filed a second complaint in OAH case number 2019070187, Student's Second Case, also naming Lompoc Unified.

On July 9, 2019, Lompoc Unified filed a complaint in OAH case number 2019070446, Lompoc Unified's Case, naming Student.

On July 12, 2019, Lompoc Unified filed a Motion to Consolidate its case with Student's First and Second Cases. Student filed a non-opposition to the motion on July 19, 2019.

CONSOLIDATION

No statute or regulation specifically provides a standard to be applied in deciding a motion to consolidate special education cases. However, OAH will generally consolidate matters that involve the same parties, a common question of law and/or fact, 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 filed two cases 76 days apart, which she is entitled to under title 20 United States Code section 1415(o). Section 1415(o) also entitles Student to separate hearings, unless she amends one of her complaints to include all the issues and dismisses the other to allow all the issues to be heard in one hearing.

Student's First Case raises two claims. The two claims allege a failure on the part of Lompoc Unified to address Student's needs for behavior support and the chronic bullying she was subjected to since April 18, 2017.

Student's Second Case raises five claims alleging a denial of a free appropriate public education, commonly referred to as FAPE. The first claim alleges a failure by Lompoc Unified to assess Student in all areas of suspected disability. The second claim contends that Lompoc Unified made educational decisions regarding Student outside of the individualized education program, also referred to as an IEP. The third claim alleges Lompoc Unified failed to offer Student extended school year services for the 2016-2017, 2017-2018, and 2018-2019 school years. The fourth claim alleges Lompoc Unified failed to hold an annual IEP team meeting. The fifth claim alleges Lompoc Unified failed to request a due process hearing to address the need to assess Student.

Lompoc Unified's Case seeks to address four issues. The first and second issues involve whether its January 23, 2018 psychoeducational and January 23, 2018 speech and language assessments of Student met the requirements of federal and state law. The third issue is whether Lompoc Unified is entitled to conduct a functional behavior assessment of Student without parental consent pursuant to its March 19, 2019 assessment plan. The fourth issue is whether the March 19, 2019 IEP Amendment offers Student appropriate counseling services.

Student's First Case and Lompoc Unified's Case involve a common question of law or fact, specifically; Student's first complaint alleges a failure on the part of Lompoc Unified to properly address Student's needs in behavior support since April 28, 2017. During that same period, Student's first complaint contends Lompoc Unified also failed to properly respond to the alleged bullying of Student. Lompoc Unified's complaint seeks to defend its response to the alleged behavioral needs and bullying of Student by

claiming its request for a functional behavior assessment was warranted and its offer of counseling services on March 19, 2019, appropriate.

Student does not oppose the motion. In addition, consolidation furthers the interests of judicial economy because the same evidence and witnesses will be presented in both cases on the issues related to Lompoc Unified's response to the alleged bullying and behavioral needs. Accordingly, consolidation of Student's First Case and Lompoc Unified's Case is granted.

However, OAH will not consolidate Student's First and Second Cases because Student has exercised her choice for two hearings pursuant to Section 1415(o). Therefore, Lompoc Unified's motion to consolidate Student's Second Case, OAH case number 2019070187, with Student's First Case, OAH case number 2019040859 and Lompoc Unified's Case, OAH case number 2019070446, is denied. If Student wishes all the issues in Student's First Case and Second Case to be heard in one hearing, Student needs to file one case that includes all issues for hearing in one complaint.

ORDER

1. Lompoc Unified's Motion to Consolidate Student's Second Case, OAH case number 2019070187, with Student's First Case, OAH case number 2019040859, and Lompoc Unified's Case, OAH case number 2019070446, is denied. Student's Second Case, OAH case number 2019070187, shall proceed on the dates currently scheduled.
2. Lompoc Unified's Motion to Consolidate Student's First Case, OAH case number 2019040859, and Lompoc Unified's Case, OAH case number 2019070446, is granted. Student's First Case is designated as the primary case. All dates previously set in Lompoc Unified's Case, OAH case number

2019070446, are vacated. The consolidated matters shall proceed on the dates currently set in Student's First Case, OAH case number 2019040859.

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 Student's First Case, OAH case number 2019040859.

DocuSigned by:
Rommel P. Cruz
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DATED: July 22, 2019

Rommel P. Cruz
Administrative Law Judge
Office of Administrative Hearings