BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:

PARENT ON BEHALF OF STUDENT,

and

ROSEDALE UNION SCHOOL DISTRICT,

OAH CASE NUMBER 2023050504

OAH CASE NUMBER 2023060767

ORDER GRANTING MOTION TO CONSOLIDATE

JUNE 28, 2023

On May 11, 2023, Parents on behalf of Student filed with the Office of Administrative Hearings, called OAH, a request for due process hearing in OAH case number 2023050504, naming Rosedale Union School District. A due process hearing request is called a complaint. On June 15, 2023, OAH granted the parties' joint request for continuance, and the due process hearing in Student's case is scheduled to start on July 11, 2023.

On June 21, 2023, Rosedale Union School District, called Rosedale, filed with OAH a complaint in OAH case number 2023060767, naming Student.

Also on June 21, 2023, Rosedale filed a motion to consolidate Rosedale's case with Student's case, as having common issues of law and fact requiring the same witnesses and evidence. Rosedale does not request a continuance from the currently scheduled hearing dates in Student's case of July 11 through 13, 2023. On June 26, 2023, Student filed an opposition supported by the sworn declaration of Student's attorney.

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 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, both cases involve a common question of law or fact. Student's due complaint alleges that Student's April 28, 2023 individualized education program, or IEP, was procedurally defective. Student alleges that Rosedale failed to make a clear offer of a free appropriate public education, called a FAPE, and predetermined the FAPE offer. Rosedale's complaint seeks an order permitting it to implement the April 28, 2023 IEP without parental consent.

Student opposes the motion on the grounds that, essentially, if his two alleged procedural violations are tried in one hearing with fewer witnesses and evidence and Student prevails, only one hearing may be necessary.

Student also argues that he did not challenge the appropriateness of the April 28, 2023 IEP in his own complaint, and now has insufficient time to issue subpoenas to

gather evidence to defend against Rosedale's complaint. Student also contends that he has short notice on which to obtain experts to testify to the appropriateness of the IEP, and the one expert he has retained is not available on the dates scheduled, but Student does not want a continuance.

Here, Student's case and Rosedale's case involve common questions of law or fact, specifically, the procedural sufficiency of the April 28, 2023 IEP. The procedural sufficiency of the April 28, 2023 IEP is an integral part of Rosedale's case, as when a school district seeks to prove that it offered a FAPE, it must also show that it complied with the procedural requirements under the IDEA. (*Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176, 200, 203-204, 206-207.) Conflicting results on these intrinsically linked cases is a definite possibility if these cases are heard separately.

The substantive appropriateness of the April 28, 2023 IEP is also a common issue in both cases. Student will be required to demonstrate as part of his own case that the alleged procedural violations caused substantive harm that denied him a FAPE, by impeding Student's right to a FAPE, significantly impeding the opportunity of Parents to participate in the IEP decision making process, or depriving Student of educational benefit. (See 20 U.S.C. § 1415(f)(3)(E); Ed. Code, § 56505, subd. (f)(2).)

Student as the prevailing party is not a given, and only after hearing substantially the same witnesses and reviewing substantially the same evidence in Rosedale's case can OAH determine if the April 28, 2023 IEP offered Student a FAPE, and should be implemented to enable Student to make educational progress appropriate in light of his circumstances.

Whether the copy of the April 28, 2023 IEP received by Student is complete or not can be readily resolved by a query to Rosedale or it's attorney. The declaration of Student's attorney does not establish that Student has, since May 4, 2023, inquired as to the completeness of the document received.

Whether or not Student's behaviors caused pain to staff working with him can be probed by calling as witnesses and questioning the persons claiming to be harmed by Student's behaviors. Student does not establish that staff medical records are necessary to defend against a FAPE claim.

Student's desire to avoid a short continuance to prepare for a consolidated hearing, whether to obtain additional records, retain additional experts, or make its currently retained expert available, does not outweigh the multiple factors favoring consolidation.

Student's case and Rosedale's case involve substantial common questions of law or fact. In addition, consolidation furthers the interests of judicial economy because the same witnesses and evidence will be presented in both cases. Consolidation will avoid the duplication of time, expense and resources involved in having these matters proceed to hearing separately and avoid the possibility of conflicting results. Accordingly, consolidation is granted.

ORDER

1. Rosedale's motion to consolidate is granted.
2. Student's case, OAH case number 2023050504, is designated as the primary case. The consolidated prehearing conference and consolidated due process hearing will proceed on the dates currently scheduled in Student's case.

3. All dates previously set in Rosedale's case, OAH number 2023060767, are vacated.
4. 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 case, which is primary, OAH case number 2023050504.

IT IS SO ORDERED.

Alexa Hohensee

Alexa Hohensee
Administrative Law Judge
Office of Administrative Hearings