BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. LIVE OAK ELEMENTARY SCHOOL DISTRICT AND SANTA CRUZ CITY SCHOOL DISTRICT,	OAH CASE NO. 2013050430 (Primary)
LIVE OAK ELEMENTARY SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2013050156 ORDER DENYING MOTION FOR RECONSIDERATION AND DENYING MOTION TO CONSOLIDATE CASES

On May 3, 2013, Live Oak Elementary School District (Live Oak) filed a Request for Due Process Hearing in Office of Administrative Hearings (OAH) case number 2013050156 (First Case) naming Student.

On May 14, 2013, Student filed a Due Process Hearing Request (complaint) OAH Case number 2013050430, naming Santa Cruz City School District.

On June 3, 2013, Student filed a Motion to Amend the Due Process Hearing Request (first amended complaint) to add Live Oak as a party.

On June 12, 2013, OAH granted Student's motion to amend his Request for Due Process Hearing in OAH case number 2013050430 (Second Case), naming Live Oak and Santa Cruz City School District (Santa Cruz).

On June 18, 2013, the parties filed a joint Motion to Consolidate the First Case with the Second Case and to continue the due process hearing dates set in both cases. OAH granted the joint motion on June 19, 2013 and ordered the matters continued to September 16, 2013 at 10 a.m. for Pre hearing Conference (PHC) and September 23-26, 2013 for Due Process Hearing.

On Friday September 13, 2013 at 4:47 p.m. Student filed a Motion to File a Second Amended Complaint. The motion was heard at the PHC on Monday September 16, 2013, at 10:30 a.m. Santa Cruz and Live Oak did not stipulate to the motion and objected to further amending the complaint on grounds that respondents are entitled to a speedy resolution of the consolidated matters and would be prejudiced because a second amendment would require a continuance causing a further delay of the hearing of the consolidated matters now scheduled for hearing next week.

On September 17, 2013, the undersigned Administrative Law Judge (ALJ) issued an order denying leave to file a second amended complaint because: (1) Student presented no evidence that Live Oak hid the data or information that he allegedly discovered for the first time on or around August 22, 2013; (2) Student presented no evidence to explain the nearly one-month delay in filing the motion to amend after discovering the information; (3) Student had the option to file a new due process complaint to address any claims arising from the newly discovered matters; and (4) the effect of the proposed amendment would prejudice respondent/petitioner Live Oak and respondent Santa Cruz, as well as Student, by denying them a speedy resolution of the already consolidated cases.

On September 17, 2013, Student filed a motion for reconsideration of the order denying leave to file a second amended complaint, and in the alternative, a motion to consolidate a new complaint filed on September 17, 2013, OAH Case No. 2013 090545 (Third Case) with the previously consolidated matter. On September 18, 2013 Live Oak and Santa Cruz filed an opposition to both motions.

Reconsideration

The Office of Administrative Hearings will generally reconsider a ruling upon a showing of new or different facts, circumstances, or law justifying reconsideration, when the party seeks reconsideration within a reasonable period of time. (See, e.g., Gov. Code, § 11521; Code Civ. Proc., § 1008.) The party seeking reconsideration may also be required to provide an explanation for its failure to previously provide the different facts, circumstances or law. (See *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1199-1200.)

DISCUSSION AND ORDER

Student fails to assert new facts, circumstances or law that would assist the ALJ in granting reconsideration. David Tollner's sworn declaration merely repeats the allegations made in the motion to file the second amended complaint. Moreover, Attorney Tollner's claim to have never been denied leave to amend a complaint is not dispositive of nor does it warrant reconsideration of the undersigned ALJ's order.

Accordingly, Student's request for reconsideration is denied.

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 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, the third proposed case alleges claims against Live Oak only. The proposed third case does not sufficiently involve common questions of law or fact as those set forth in the previously consolidated cases nor would consolidation necessarily promote judicial economy. The allegations in the proposed third case predominantly refer to Live Oak's alleged failure to disclose assessment data which Student contends deprived parents of meaningful participation in IEP meetings in March 2013. The remaining allegations appear duplicative of allegations made in the previously consolidated second case against Live Oak. In his motion, Student implies that the third case does not necessarily involve common questions of law or fact and may not involve the same witnesses but he asserts that they are "nearly identical to the complaint against Live Oak".

Consolidation would only be appropriate if it furthered the interests of judicial economy because of the commonality of legal and factual issues, plus documentary evidence and witnesses. The issues alleged in the first and second case involve questions of Santa Cruz and Live Oak's failure to provide support services, failure to implement those services, and failure to provide appropriate instruction in the in the 2011-2012 and 2012-2013 school years. As stated above, the proposed third case against Live Oak predominantly raises issues concerning Live Oak's alleged failure to disclose information to Parents which would have enabled them to meaningfully participate and make decisions appropriate to Student's program for the 2013-2014 school year. As such, Student's complaint does not meet the test for consolidation and the motion is denied.

IT IS SO ORDERED.

Dated: September 19, 2013

/s/
STELLA OWENS-MURRELL
Administrative Law Judge
Office of Administrative Hearings