BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENTS ON BEHALF OF STUDENT, v. EVEREST PUBLIC HIGH SCHOOL.	OAH CASE NO. 2013060939
EVEREST PUBLIC HIGH SCHOOL v. PARENTS ON BEHALF OF STUDENT.	OAH CASE NO. 2013070332 ORDER GRANTING MOTION TO CONSOLIDATE

On June 20, 2013, Parents on behalf of Student (Student), through the attorney, David H. Tollner, filed a Request for Due Process Hearing in OAH case number 2013060939 (Student's case) naming the Everest Public High School (District).

On July 5, 2013, through its attorney, Megan M. Moore, District filed a Request for Due Process Hearing in OAH case number 2013070332 (District case) against Student.

In a separate filing, on July 5, 2013, District filed a Motion to Consolidate the First Case with the Second Case. On July 9, 2013, Student filed an opposition to District's Motion to Consolidate. On July 10, 2013, District filed a response to Student's opposition to the Motion to Consolidate, and Student filed a reply to District's response on July 10, 2013. As discussed below, the request to consolidate the two cases is granted. [1]

[1] In its complaint the District is asking that it be allowed to assess Student without Parent consent. If Student's Parents sign the consent to assess, the District's case may be moot. It is unclear whether District has received a signed consent to assess. Nonetheless, this discussion appears not relevant to the question of whether the two cases should be consolidated or otherwise.

APPLICABLE LAW

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].)

DISCUSSION

Student's case alleges four issues. Student alleges that: 1) District denied him a free appropriate public education (FAPE) because District failed to conduct required assessments of Student in the course of about three and half years; 2) District violated his special education rights because District failed to make him an offer of FAPE at the September 14, 2011, September 20, 2011, November 18, 2011, October 25, 2012, December 12, 2012, February 1, 2013, February 21, 2013 and March 20, 2013, individualized educational program meetings (IEP); 3) District denied him a FAPE when District failed to create a transition plan prior to Student's 16th birthday; and 4) District denied him a FAPE within the last two years because District failed offer and implement an IEP individually tailored to meet student's unique needs. District's complaint raises a single issue of whether District can assess Student without parental consent pursuant to the assessment plan dated April 5, 2013.[2]

Here, the both District's case and issue one of Student's case concern assessments. In this regard, the two cases are similar and consolidating the cases will promote judicial economy. Both cases involve the same parties and cover the same or similar timelines and issues. The issues raised in both cases involve District's obligation to provide FAPE to Student, and whether District met its procedural and substantive obligation to provide Student with a FAPE through the IEP process during the relevant period. The cases present common questions of law and facts and resolving the issues raised in both case would involve the analysis of the same questions of law and facts. Evaluating and addressing the issues will involve much of the same evidence and witnesses. Therefore, consolidation furthers the interests of judicial economy and accordingly, consolidation is granted.[3]

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[2] In its complaint, District indicated that a copy of the assessment plan was earlier provided to Student's parents on January 11, 2013, February 21, 2013, March 2, 2013 and March 20, 2013.

[3] This order does not address the issue of whether any of the issues identified in either of the cases are ripe for adjudication, moot, or otherwise appropriately brought for adjudication. Therefore, neither party is precluded from filing any appropriate request(s) to address other issues in the consolidated matters.

ORDER

1. District's Motion to Consolidate is granted.

2. All dates previously set in OAH Case Number 2013070332 (District's case) are vacated.

3. The consolidated matters shall proceed based on the timeline established in OAH Case Number 2013060939 (Student's case).

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 OAH Case Number 2013060939 (Student's case).

Dated: July 12, 2013

/s/
ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings