

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

POWAY UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2013010764

ORDER DENYING MOTION TO
CONSOLIDATE AND MOTION TO
CONTINUE STUDENT'S CASE

On November 16, 2012, Parent on behalf of Student filed a Request for Due Process Hearing with the Office of Administrative Hearings (OAH) case number 2012110589 (First Case), naming Poway Unified School District (District). On November 20, 2012, OAH issued a scheduling order, setting the hearing in the First Case for December 20, 2012. On December 7, 2011, OAH granted District's motion to continue, setting the hearing for February 4 through 7, 2013. Student and District filed PHC statements, which included lists of witnesses and exhibits. Administrative Law Judge (ALJ) Paul H. Kamoroff held the PHC on the morning of January 23, 2013. District's counsel mentioned during the PHC that the District was considering filing its own due process complaint and would seek consolidation with the First Case. ALJ Kamoroff issued an order following the PHC, listing the issues for hearing and affirming the hearing dates.

On January 25, 2013,¹ District filed a Request for Due Process Hearing in OAH case number 2013010764 (Second Case), naming Student. With its complaint, District also filed a Motion to Consolidate the First Case with the Second Case and to continue the due process hearing dates set in Case Number 2012110589 (First Case). On January 25, 2013, Student filed an opposition to the motion to consolidate.

In the Second Case, District states that Student seeks independent educational evaluations (IEE's), at District's expense, in the areas of spelling, sensory processing, and written communication, including vocabulary. District states that Parent requested that District fund IEE's at the December 10, 2012 IEP and, again, at a January 16, 2013 IEP. District allegedly provided Parent with prior written notice, denying the requests, on January 22 and 23, 2013. District seeks an OAH finding that its triennial evaluation, which was presented at the November 2011 triennial team meeting, and supplemental assessments, which were considered at the December 2012 team meeting, were appropriate, and that Student is not be entitled to IEE's, at public expense.

¹ The District's complaint and motion were faxed to OAH on January 24, 2013, after 5:00 p.m. Thus, they were deemed filed the next business day.

Student objects to the consolidation and continuance, asserting that the District was aware of Student's requests for IEE's no later than December 10, 2012, and that the late filing the Second Case was a means of delaying the hearing on the First Case, by seeking consolidation and continuance. Further, in order to assure that the hearing in the First Case is not delayed, Parent states that she notified the District that Student withdrew his request for IEE's at District expense.

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].)

The First Case will consider whether Student was denied a free appropriate public education (FAPE) for the 2011-12 school year and the 2012-13 school year (up to November 16, 2012). The District's triennial evaluations of 2011 are likely to be addressed in Student's case. However, further assessments considered at the December 10, 2012, IEP, as well as the IEP itself, are not at issue in the First Case. Therefore, consolidation would add additional factual determinations and legal issues to the First Case.

Additionally, District obtained a continuance in the First Case on December 7, 2012, setting the hearing for February 4, 2013. Yet, District waited until six (6) business days before commencement of hearing to file the Second Case and to seek consolidation with, and continuance of, the First Case.

Student opposes any additional continuances of the First Case. Though some overlap of factual determinations may occur, consolidation is unwarranted, especially since District requests continuance. Consolidation and continuance of these two matters, at this late date, is inconsistent with the IDEA mandate of resolving due process in a timely and judicious manner.

ORDER

1. The District's motion is denied.
2. All dates remain as presently scheduled.

Dated: January 28, 2013

/s/

CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings