

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TWIN RIVERS UNIFIED SCHOOL
DISTRICTS.

OAH CASE NO. 2013071251

OAH CASE NO. 2013100450
(PRIMARY)

ORDER FOLLOWING PRE-HEARING
CONFERENCE OF OCTOBER 11,
2013; DENYING MOTION TO
DISMISS; GRANTING
CONSOLIDATION OF OAH CASES;
RESETTING MEDIATION,
PREHEARING CONFERENCE AND
DUE PROCESS HEARING

On October 11, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Paul H. Kamoroff, Office of Administrative Hearings (OAH). Nicole Hodge Amey, Attorney at Law, appeared on behalf of Parent on behalf of Student (Student). Heather M. Edwards, Attorney at Law, appeared on behalf of the Twin Rivers Unified School District (District). The PHC was recorded.

PROCEDURAL HISTORY

On July 30, 2013, Student filed a Due Process Hearing Request, naming the District. On August 28, 2013, Student, through counsel, filed an amended complaint. This case was designated OAH Case Number 2013071251 (First Case). On October 11, 2013, Student, through counsel, filed a second Due Process Hearing Request, naming the District. This case was designated OAH Case Number 2013100450 (Second Case). During the PHC held on October 11, 2013, the District requested that the First Case be dismissed or, in the alternative, the First Case and the Second Case be consolidated. Student opposed the District's motion.

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].)

OAH will normally grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc.....), however, special education law does not provide for a summary judgment procedure.

DISCUSSION

Motion to Dismiss

The District moves to dismiss the First case because it asserts that Student has been provided the educational records complained for in Student's complaint. The District argues that the First Case should therefore be dismissed as moot. The District's motion to dismiss is a thinly veiled motion for summary judgment, which is generally impermissible in special education matters. The District's motion also requires a factual analysis, e.g. the extent of any harm arising from the alleged conduct, which requires a hearing. Consequently, the District's motion is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits, based upon factual information outside the information provided in Student's complaint. For these reasons, District's motion to dismiss the First Case is denied.

Motion to Consolidate

In the First Case, Student asserts the sole issue that the District denied her a free appropriate public education (FAPE) by failing to timely provide her school records. During the PHC, Student's counsel stated that she has since been provided the educational records complained for in Student's complaint. However, Student asserts that the alleged conduct prevented her from filing additional claims within the applicable two year statute of limitations. Student fails to include the additional claims within this complaint.

In the Second Case, Student alleges the additional claims. Specifically, Student alleges four claims, each which assert that the District denied Student a FAPE based upon its failure to provide appropriate placement, services, and a behavior related assessment.

During the PHC, although Student objected to consolidation, she agreed that the First Case and the Second Case involve identical parties and overlapping witnesses. Student's counsel also stated that Student would not be prejudiced by consolidation of the First Case and the Second Case.

Accordingly, the undersigned ALJ hereby grants the District's request to consolidate the First Case and the Second Case. By permitting the consolidation of the First Case and the Second Case, all issues can be litigated in a single forum which will result in judicial economy.

Consolidation of the First Case and the Second Case will reset the hearing dates for the First Case, and the Second case will be deemed the primary case for the consolidated matter.

ORDER

1. OAH Case Number 2013071251 (First Case) and OAH Case Number 2013100450 (Second Case) are consolidated. The consolidated cases shall now be heard on the dates set for the Second Case, unless otherwise ordered.

2. All dates previously set in OAH Case Number 2013071251, the First Case, are vacated.

IT IS SO ORDERED.

Dated: October 14, 2013

/s/

PAUL H. KAMOROFF
Administrative Law Judge
Office of Administrative Hearings