

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matters of:

PASADENA UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT ,

OAH CASE NO. 2013120649

PARENT ON BEHALF OF STUDENT,

v.

PASADENA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2014010182

ORDER GRANTING MOTIONS TO
AMEND COMPLAINT, CONSOLIDATE
AND CONTINUE, AND CANCELLING
MEDIATION

On December 18, 2013, Pasadena Unified School District (District) filed a request for due process hearing (District's complaint) naming Student, Office of Administrative Hearings (OAH) case number 2013120649 (District's Case). District's complaint asserted two issues. First, District contended that it properly conducted a speech and language evaluation and a psycho-educational evaluation of Student in October 2013, and that Student therefore was not entitled to independent educational evaluations (IEEs) in those areas at District's expense. Second, District contended that at Student's initial IEP team meeting held on October 15, 2013, the District members of the IEP team properly concluded, based on the above assessments, that Student was not eligible for special education services.

On December 23, 2013, District filed a motion to continue mediation in District's Case to February 13, 2014, the pre-hearing conference (PHC) to February 28, 2014, and the hearing to March 10 and 11, 2014. Student did not oppose District's motion, and OAH granted the requested continuance in an Order issued on December 27, 2013.

On January 6, 2014, Student filed a request for due process hearing (Student's complaint) naming District, commencing OAH case number 2014010182 (Student's Case). Student contended that, after Student's parents (Parents) requested a psycho-educational IEE for Student at District's expense, District unnecessarily delayed filing its request for a due process hearing to confirm that its evaluation was properly conducted, and thereby waived its right to contest Student's request for a psycho-educational IEE. Student also contended that District had committed several procedural violations of the Individuals With Disabilities

Education Act (IDEA) and the Education Code in organizing and conducting Student's initial IEP team meeting, and that these violations had significantly impeded Parents' opportunity to participate in the decision-making process regarding Student's eligibility for a free appropriate public education (FAPE) as a special education student. Student's complaint also requested as a remedy that OAH not consolidate Student's Case with District's Case, but instead bifurcate Student's Case and consider Student's claim regarding unnecessary delay by District before hearing any other issues in either case. OAH's January 8, 2014 scheduling order in Student's case set the matter for a PHC for February 24, 2014 and hearing on March 4, 2014.

Also on January 6, 2014, Student filed a motion for summary judgment in District's Case, requesting that District's Case be dismissed in its entirety because District unnecessarily delayed filing its request for a due process hearing. On January 14, 2014, OAH denied Student's motion on grounds that it was not based on an alleged lack of OAH jurisdiction that was evident from the allegations contained in District's complaint, but instead sought summary adjudication of the factual and legal merits of Student's claim that District had unnecessarily delayed the filing of District's complaint. Special education law does not provide for such a summary judgment procedure.

On January 9, 2014, District filed a motion to consolidate Student's Case with District's Case, and to continue the mediation, PHC and hearing dates in Student's Case to the March 10-11, 2014 dates set forth in OAH's December 27, 2013 Order in District's Case.

On January 23, 2014, Student filed a motion to amend Student's complaint, join (consolidate) Student's Case and District's Case, and continue the two cases for hearing on March 4, 2014, the initial hearing date set by OAH for hearing of Student's case prior to Student's amendment of Student's complaint. Student also indicated that student waived voluntary mediation in Student's Case and District's Case.

On January 24, 2014, District filed a response to Student's motion, in which District did not oppose Student's amendment, or consolidation of the cases, but requested that the consolidated matters be heard beginning on March 10 and 11, 2014.

Amendment

An amended complaint may be filed when either (a) the other party consents in writing and is given the opportunity to resolve the complaint through a resolution session, or (b) the hearing officer grants permission, provided the hearing officer may grant such permission at any time more than five (5) days prior to the due process hearing. (20 U.S.C. §1415(c)(2)(E)(i).)

Here, Student requested that Student's complaint be amended to include the issue, "Whether the [District] assessed all areas of suspected disability during the assessment process." District has consented in writing to this amendment, and sufficient time exists to conduct a resolution session – more than 30 days between the filing of the amendment on

January 24, 2014 and either the existing March 4, 2014 hearing date for Student's Case, or the March 10, 2014 hearing date requested by District. Accordingly, Student is deemed to have filed an amended complaint as of January 27, 2014 to include the issue set forth above. Student need not file an additional complaint encompassing all of Student's issues in a single document.

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, both Student and District have requested that District's Case and Student's Case be consolidated. The matters involve the same parties and common questions of law or fact. The facts and law that are relevant to District's claim that the District team members at Student's initial IEP properly concluded that Student was not eligible for special education are the same facts and law relevant to Student's claim that the IEP was improperly organized and conducted in a manner that significantly impeded Parents' opportunity to participate in the decision-making process regarding Student's eligibility for special education. Student's other principal contention – that District waived its right to contest Student's request for an IEE by unnecessarily delaying District's complaint – is an affirmative defense to District's claim that Student is not entitled to an IEE because District's psycho-educational and speech and language assessments were properly conducted. Student has already raised this defense in District's case in a summary judgment motion that was denied because its merits could only be determined at hearing. Evidence of the amount of delay and whether it was unnecessary will presumably involve testimony and documents from Parents, District administrators, and others who would also offer testimony and documents regarding the propriety of District's assessments. Thus, it will further the interests of judicial economy to save time and prevent inconsistent rulings by taking evidence on all of the above issues at a single, consolidated hearing. Accordingly, consolidation is granted.

Continuance

A due process hearing must be held, and a decision rendered, within 45 days of receipt of the complaint, unless a continuance is granted for good cause. (Ed. Code, §§ 56502, subd. (f) & 56505, subd. (f)(1)(C)(3).) Here, good cause exists to continue the dates in Student's Case to those set in District's Case, based on the determination above that both matters should be addressed in a single consolidated proceeding. Student has requested that both matters be heard on the March 4, 2014 hearing date initially set for Student's Case prior to Student's amendment. However, that date is no longer operative in Student's Case, because the filing of an amended complaint restarts the applicable timelines for the due

process hearing (20 U.S.C. §1415(c)(2)(E)(ii)). Also, Student's requested hearing date would require a shortening of time for the hearing of District's Case, for which good cause has not been shown. Good cause does exist to continue Student's Case so that it may be heard on March 10 and 11, 2014, the dates already set for the hearing of District's Case.

Cancellation of Mediation

Mediation is a voluntary process, and a party cannot be compelled to participate in mediation. (Ed. Code, §§ 56500.3, subd. (a).) Student's waiver of mediation cancels the previously-scheduled mediations in Student's Case and District's Case, and the dates for those mediations are vacated.

ORDER

1. Student's motion to amend Student's complaint is granted, and Student is deemed to have filed an amended complaint as of January 27, 2014 to include the issue, "Whether the [District] assessed all areas of suspected disability during the assessment process." Student need not file an additional complaint encompassing all of Student's issues in a single document.
2. The parties' motions to consolidate are granted.
3. All dates previously set in Student's Case number 2014010182 are vacated.
4. The previously-scheduled mediations in Student's Case and District's Case are cancelled at Student's request, and the dates for those mediations are vacated.
5. Student's Case is continued so that the consolidated matters will proceed on the following dates set forth in OAH's December 28, 2013 Order granting District's motion to continue District Case number 2013120649:

Mediation:	Cancelled at Student request.
Prehearing Conference:	February 28, 2014 at 10:00 a.m.
Due Process Hearing:	March 10, 2014, from 1:30 p.m. to 5:00 p.m., and March 11, 2014, from 9:00 a.m. to 4:30 p.m., and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge. These hearing dates remain subject to modification at the prehearing conference.

6. The 45-day timeline for issuance of the decision in the consolidated matters shall be based on the January 27, 2014 filing date for Student's amended complaint in Student's Case No. 2014010182, and on the continuance granted in Student's Case as of the date of this Order.

7. District's Case number 2013120649 is designated as the primary case in the consolidated matters, and all future pleadings and other documents in the consolidated matters are to be maintained in that case file.

Dated: January 27, 2014

/s/

ROBERT MARTIN
Administrative Law Judge
Office of Administrative Hearings