

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

OAH Case No. 2015020675

v.

CHULA VISTA ELEMENTARY SCHOOL
DISTRICT,

CHULA VISTA ELEMENTARY SCHOOL
DISTRICT,

OAH Case No. 2015010881

v.

PARENT ON BEHALF OF STUDENT.

ORDER GRANTING STUDENT'S
MOTION TO CONSOLIDATE AND
CONTINUING DISTRICT'S CASE

On January 27, 2015, Chula Vista Elementary School District filed a request for Due Process Hearing naming Student in OAH case number 2015010881 (District's Case). The issue raised in District's complaint was whether District was entitled to assess Student in the areas of academics, health, intellectual development/cognitive abilities, language/speech communication, motor development, social/emotional, adaptive behavior and sensory processing pursuant to District's assessment plan provided to Parent on or about December 15, 2014, without Parent's consent. District's Complaint contends that, in particular, Parent refused to consent to any assessment of Student's intellectual development or cognitive functioning.

On February 11, 2015, Parent on behalf of Student filed: (i) a request for due process hearing naming District, under OAH case number 2015020675 (Student's Case); and (ii) a motion to consolidate Student's Case with District's Case. Student's complaint contended that District denied Student a free appropriate public education: (a) by failing to provide Student an aide fluent in Alfonso's mode of communication, the Soma Rapid Prompting Method, and by failing to train Student's teachers and aide in the Rapid Prompting Method during the 2013-2014 and 2014-2015 school years; and (b) by failing to provide Student instruction in the Least Restrictive Environment appropriate for Student, a general education classroom with an aide fluent in the Rapid Prompting Method. Student's Complaint contends that District assessments of Student conducted in 2013 and 2014 yielded invalid results because they were not conducted in Student's mode of communication, Rapid Prompting, and that Parent refused to consent to District's December 15, 2014 assessment

plan because it, too, did not provide for the assessments to be done in Rapid Prompting, and because further assessment was unnecessary because independent assessments had been conducted within the prior year, in June 2014.

On February 17, 2015, District filed an opposition to Student's motion to consolidate on grounds that the issues raised in Student's complaint regarding District's failure to teach or assess Student in his primary mode of communication, the Rapid Prompting Method, did not involve common questions of law or fact with District's issue of its right to assess Student in the areas of academics, health, intellectual development/cognitive abilities, language/speech communication, motor development, social/emotional, adaptive behavior and sensory processing pursuant to District's assessment plan provided to Parent on or about December 15, 2014. Student filed a response on February 20, 2015.

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].)

Student has 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 whether District was entitled to assess Student without conducting the assessment using Rapid Prompt Method involve the same facts and law relevant to Student's claim that District denied Student a FAPE by failing to provide Student an aide fluent in Alfonso's mode of communication, Rapid Prompt, and by failing to train Student's teachers, aide and peers in Rapid Prompt during the 2013-2014 and 2014-2015 school years. District and Student presumably will rely on many of the same witnesses and documents to support their respective contentions. 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. Finally, consolidating the matters will cause no delay of District's case, which is set for hearing on the same day as Student's case, April 7, 2015. Accordingly, consolidation is granted.

ORDER

1. Student's motion to consolidate Student's case number 2015020675 with District's case number 2015010881 is granted.

2. Student's case number 2015020675 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.
3. All dates in District's case are vacated and the matter will proceed on the dates in Student's case. The hearing on Student's case shall be April 7, 8 and 9.
4. The decision timeline for issuance of the decision in the consolidated matters shall be based on the February 11, 2015 filing date of Student's complaint in Student's case.

DATE: March 6, 2015

/s/

ROBERT MARTIN
Administrative Law Judge
Office of Administrative Hearings