

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SEQUOIA UNION HIGH SCHOOL
DISTRICT.

OAH Case No. 2014100221

ORDER DENYING MOTION TO
CONSOLIDATE

On October 6, 2014, Parents, on behalf of Student (Student) filed a Request for Due Process Hearing, in OAH Case Number 2014100221 (First Case), naming the Sequoia Union High School District.

On February 17, 2015, Student filed a Request for Fair Hearing in OAH Case Number 2015020767 (Second Case), naming the Golden Gate Regional Center (Regional Center).

On March 3, 2015, Student filed a Motion to Consolidate the First Case with the Second Case. On March 4, 2015, Sequoia filed a notice of non-opposition to Student's consolidation request.

LEGAL ANALYSIS

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].)

Special education due process hearing procedures extend to the parent or guardian, to the student in certain circumstances, and to "the public agency involved in any decisions regarding a pupil." (Ed. Code, § 56501, subd. (a).) A "public agency" is defined as "a school district, county office of education, special education local plan area, . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs." (Ed. Code, §§ 56500 and 56028.5.)

Under the Individuals with Disabilities Education Act (IDEA), the State Educational Agency has the responsibility for the general supervision and implementation of the Act. (20 U.S.C. § 1412(a)(11)(A); 34 C.F.R. § 300.149(a)(2006).) This responsibility includes ensuring that a free appropriate public education (FAPE) is available to all children with disabilities in the mandated age ranges within the state. (20 U.S.C. § 1412(a)(1)(A); 34 C.F.R. § 300.101(a)(2006).) Generally, a FAPE is made available through a Local Educational Agency (LEA) within the state. (20 U.S.C. § 1412(a)(12)(A); *Letter to Covall*, 48 IDELR 106 (OSEP 2006).) In this case, Sequoia is the LEA within the meaning of these provisions.

Regional Centers provide services under the Lanterman Act (Welf. & Inst.Code, §§ 4400 et seq., 4512) for developmentally disabled infants, toddlers, children and adults who qualify with specified disabilities. The services which are provided by Regional Centers are separate from those provided under the IDEA. Regional Centers provide daily living services and supports to persons with developmental disabilities, unrelated to the provision of a FAPE.

DISCUSSION

Student is a 17 years old, who has been receiving special education and related services from Sequoia as a child with autism. Student is also a client of the Regional Center. In both the First Case and the Second Case, Student requests placement in a residential treatment center, identified as the HELP Group and located in Los Angeles. Student asserts that due to the commonality of the remedy sought, and the fact that both Sequoia and the Regional Center are unsure as to which of them is responsible for funding Student's placement at the HELP Group, the First Case and the Second case should be consolidated. Student asserts that the First Case and the Second Case involve the same witnesses and should therefore be consolidated to further the interests of judicial economy by saving time and costs.

While Sequoia has not opposed consolidation, Student's complaint against Sequoia arises from the IDEA and involves Sequoia duty to provide a FAPE to Student. In the First Case, Student alleges three issues regarding whether Sequoia: 1) provided Student with appropriate educational program, placement and services; 2) made a timely and appropriate individualized education program offer; and 3) adequately assessed Student during the 2014-2015 school year. In Student's First Case, Student asserts that he was denied a FAPE by Sequoia, which as the LEA, is responsible for providing Student with an IEP and a FAPE.

While Student in his Second Case against the Regional Center seeks a similar remedy as that requested in the First Case, Student's Second Case falls under the Lanterman Act (Welf. & Inst. Code, §§ 4400 et seq., 4512), and requires application of legal standards and procedural rules different than the ones applicable under the IDEA. Without more, the Regional Center does not share the responsibility for providing special education and related services which were provided to Student pursuant to the IEP process, to Student. (20 U.S.C. § 1412(a)(1)(A); 34 C.F.R. § 300.101(a) (2006).) Thus, the FAPE claims against Sequoia do

not arise from the same transaction or occurrence which form the basis of Student's claims against the Regional Center and do not share a common question of law. Nor do the First Case and the Second Case share a common question of fact, e.g. whether the IEP's constitute a FAPE offer for Student.

In addition, while Student contends that the two cases may involve same witnesses, he failed to show that the witnesses for Sequoia in the First Case, and those for the Regional Center in the Second Case, would testify as to same facts or present similar or same evidence. The First Case and the Second Case involve different factual circumstances and require different legal analysis, and if the cases were consolidated, it is unclear what judicial economy would result as the witnesses may be required to testify longer in order to address separate facts and contrasting legal standards. Therefore, it is not established that consolidation of the First Case and the Second Case would further the interests of judicial economy.

In conclusion therefore, the First Case and the Second Case do not involve a common question of law or fact, or the same parties, and it does not further the interests of judicial economy to consolidate these cases. Student's request to consolidate is therefore denied.

ORDER

1. Student's Motion for consolidation is denied.
2. All hearing dates for OAH Case Number 2014100221 (First Case) and for OAH Case Number 2015020767 (Second Case) shall remain as presently set, unless otherwise ordered.

DATE: March 06, 2015

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings