

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2019040760
v.	
CYPRESS SCHOOL DISTRICT,	
CYPRESS SCHOOL DISTRICT,	OAH Case No. 2019040046
v.	
PARENT ON BEHALF OF STUDENT.	ORDER FOLLOWING PREHEARING CONFERENCE GRANTING STUDENT'S MOTION FOR CONSOLIDATION; DENYING DISTRICT'S REQUEST FOR CONTINUANCE; AND DENYING DISTRICT'S REQUEST FOR A SIGNED RELEASE

On April 1, 2019, Cypress Unified School District filed with the Office of Administrative Hearings a Request for Due Process Hearing in OAH case number 2019040046 (Cypress's Case), naming Student.

On April 17, 2019, Cypress filed a Motion to Continue the prehearing conference and hearing dates in its case, along with a Motion to Compel Student's parent(s) to provide Cypress with a parentally-signed release of information permitting Cypress to provide confidential Student information to Student's attorney pursuant to Family Educational Rights and Privacy Act.

On April 17, 2019, Student filed a Request for Due Process Hearing in OAH case number 2019040760 (Student's Case), naming Cypress.

On April 17, 2019, Student filed a Motion to Consolidate Cypress's Case with Student's Case and to continue the due process hearing date set in Case Number 2018100204 (Cypress's Case). On April 18, 2018, Cypress filed a Notice of Non-Opposition to Student's Motion to Consolidate.

On April 19, 2019, Student filed an Opposition to Cypress's Request for Continuance and Motion to Compel, and requested leave from OAH to seek sanctions from Cypress related to the Motion to Compel.

On April 22, 2019, a telephonic prehearing conference was held before Administrative Law Judge Ted Mann, Office of Administrative Hearings. Jane DuBovy, Attorney at Law, appeared on behalf of Student. Christopher Fernandes, Attorney at Law, appeared on behalf of Cypress School District. The PHC was recorded.

Based upon discussion with the parties, the ALJ issues the following order:

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, Cypress's Case and Student's Case involve a common question of law or fact, specifically, the legal sufficiency of District's November 6, 2018 psycho-educational and speech/language triennial assessments of Student and whether Student is entitled to publically-funded independent educational evaluations in those areas. In addition, consolidation furthers the interests of judicial economy because the two cases involve many of the same witnesses and exhibits. Accordingly, consolidation is granted. Student's case is designated the primary case.

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).)

Cypress's motion to continue the hearing is rendered moot by the granting of Student's motion to consolidate, as the timeline for the case will follow Student's case going forward. Cypress's motion for continuance is denied without prejudice.

Compelled FERPA Release

The purpose of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education", and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a

complaint “with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.” (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.) Thus, OAH does not have jurisdiction to entertain claims that are not based on the IDEA or state law implementing the IDEA.

Cypress seeks to compel a signed FERPA release from Student’s parent(s) permitting Cypress to release Student’s educational information to Student’s attorney, including Cypress’s pleadings and other filing in the consolidated matters. Student asserts that matters related to FERPA are outside OAH jurisdiction, and that in any event, an attorney’s notice of representation is sufficient to compel Cypress to serve on Student’s attorney all documents previously filed in the consolidated cases.

Here, Cypress provides no convincing legal rationale for OAH to apply FERPA protections to the regular course of service by Cypress’s attorney on Student’s attorney of filed pleadings or other documents filed by Cypress with OAH. Cypress shall promptly serve upon Student all pleadings and other filings related to the consolidated cases, not previously provided, and shall file with OAH the appropriate proof(s) of service.

ORDER

1. Student’s Motion to Consolidate is granted.
2. All dates previously set in OAH Case Number 2019040046 (Cypress’s Case) are vacated.
3. Cypress’s Motion to Continue is denied without prejudice. The consolidated case will proceed according to the Scheduling Order issued in Student’s case setting the prehearing conference for June 3, 2019, at 1 p.m., and the Due Process Hearing in the consolidated cases shall be held on Tuesday, June 11, 2019 through Thursday, June 13, 2019 at 9:30 a.m. on the first day, and 9:00 a.m. on the following days, and continuing day to day, as needed at the discretion of the Administrative Law Judge.

4. The 45-day timeline for issuance of the decision in the consolidated cases shall be based on the date of the filing of the complaint in OAH Case Number 2019040760 (Student's Case).

IT IS SO ORDERED.

DATE: April 22, 2019

DocuSigned by:

Ted Mann

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TED MANN

Administrative Law Judge

Office of Administrative Hearings