

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENT ON BEHALF OF STUDENT,

v.

SAN DIEGO COUNTY OFFICE OF EDUCATION,
OAH CASE NUMBER 2021100693

ORDER REQUIRING FURTHER INFORMATION REGARDING
MOTION TO CONSOLIDATE

OCTOBER 29, 2021

On June 3, 2021, Student filed with the Office of Administrative Hearings, called OAH, a Request for Due Process Hearing in OAH case number 2021060238, called the First Case, naming Grossmont Union High School District, San Diego Unified School District, and San Diego County Office of Education. The complaint in the First Case alleged one issue against each of the three respondents. On June 15, 2021, OAH issued an Order Determining Due Process Complaint Insufficient as to San Diego County Office of Education. Because Student did not file an amended complaint within 14 days of that Order, on June 30, 2021 OAH dismissed the San Diego County Office of Education from the First Case.

On October 18, 2021, Student filed a motion for leave to file an amended complaint, along with a proposed amended complaint, in the First Case. OAH granted Student's motion for leave to file an amended complaint, which was deemed filed as of October 22, 2021. San Diego County Office of Education was the respondent named in issue three of the amended complaint in the First Case. Issue number three in the amended complaint states as follows:

Whether Student is being denied FAPE because SAN DIEGO COUNTY OFFICE OF EDUCATION, during the time period from June 24, 2021 to present, failed to (A) Offer appropriate services and supports reasonably calculated to meet his unique needs in the areas of specialized academic instruction, behavior intervention and executive function, as provided in Student's IEP dated August 18, 2020, as amended; and (B) Provide educational services, including appropriate school placement, pursuant to Student's IEP Amendment dated October 1, 2021.

On October 22, 2021, Student filed a Request for Due Process Hearing in OAH case number 2021100693, called the Second Case, naming only the San Diego County Office of Education. The sole issue in the Second Case states as follows:

Whether Student is being denied FAPE because SAN DIEGO COUNTY OFFICE OF EDUCATION, during the time period from June 24, 2021 to present, failed to: (A) Offer appropriate services and supports reasonably calculated to meet his unique needs in the areas of specialized academic instruction, behavior intervention and executive function, as provided in Student's IEP dated August 18, 2020, as amended; and (B) Provide educational services, including appropriate school placement, pursuant to Student's IEP Amendment dated October 1, 2021.

On October 25, 2021, Student filed in the Second Case a Motion to Consolidate the First Case with the Second Case. The San Diego County Office of Education did not file a response to the Motion to Consolidate.

CONSOLIDATION

No statute or regulation specifically provides a standard to be applied in deciding a motion to consolidate special education cases. However, OAH will generally consolidate matters that involve the same parties, a common question of law and/or fact, 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].)

Since the identical issue is alleged against the San Diego County Office of Education in both the First Case and the Second Case, and the Second Case does not allege any other issues against either the San Diego County Office of Education, or any other respondents, it is unclear why Student filed two cases and seeks consolidation of those cases. In this circumstance OAH requires further information from Student before ruling on Student's Motion to Consolidate.

ORDER

1. Student shall file with OAH by 5:00 PM on November 3, 2021, a brief, supported by a declaration sworn under penalty of perjury, explaining:
 - a. why the First Case and the Second Case, which both allege an identical issue against the San Diego County Office of Education should be consolidated; and

b. whether Student intends to continue with both cases going forward, along with authority showing Student may have two cases proceeding with the same issue against the same respondent at the same time.

2. In the alternative to filing a brief and declaration as described in paragraph 1 of this Order, Student shall by 5:00 PM on November 3, 2021, request OAH dismiss one case and withdraw the motion to consolidate.

3 The San Diego County Office of Education may file with OAH its response to Student's brief and declaration providing further information regarding Student's motion to consolidate, no later than 5:00 PM on November 5, 2021. No reply briefs will be considered.

IT IS SO ORDERED.

Christine Arden

Christine Arden

Administrative Law Judge

Office of Administrative Hearings