

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:

PARENT ON BEHALF OF STUDENT,

and

WESTSIDE UNION SCHOOL DISTRICT,

OAH CASE NUMBER 2021120662

OAH CASE NUMBER 2021120296

ORDER GRANTING MOTION TO CONSOLIDATE

JANUARY 5, 2022

On December 7, 2021, Parent on behalf of Student filed with the Office of Administrative Hearing, referred to as OAH, a Request for Due Process Hearing in OAH case number 2021120296, naming Westside Union School District.

On December 16, 2021, Parent on behalf of Student filed a Request for Due Process Hearing in OAH case number 2021120662, naming Westside Union School District.

On December 30, 2021, Westside Union School District filed a Motion to Consolidate the cases.

On January 4, 2022, Parent on behalf of Student filed a Non-Opposition to 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].)

Consolidation typically is sought when opposing parties have claims involving a common question of law and/or fact. When a party seeks to add additional facts or claims, an amended complaint may be filed when the other party consents in writing and is given the opportunity to resolve the complaint through a resolution session, or when the hearing officer grants permission. The hearing officer may grant permission at any time more than five days before the due process hearing. (20 U.S.C. § 1415(c)(2)(E)(i).) The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. § 1415(c)(2)(E)(ii).)

Here, Parents could have filed a motion to amend and amended complaint as to OAH case number 2021120296, rather than filing two separate complaints. This would have avoided the necessity of consolidating the complaints. However, Parents were not represented by counsel at the time of the filing of the complaints and therefore the issue of whether to consolidate the two complaints is necessary.

Both cases involve a common question of law or fact, specifically whether Westside Union School District failed to: (1) timely convene Student's individualized education program team meeting in October 2021; (2) provide Student with speech and language services during the 2021-2022 school year; and (3) provide quarterly status reports on Student's speech and language goals. Consolidation furthers the interests of judicial economy because the complaints contain almost identical allegations. Accordingly, consolidation is granted.

Student may consider moving to amend OAH case number 2021120662, designated as the Primary Case in this matter, if necessary to add any additional facts and claims, and thereafter dismiss the first filed case, OAH case number 2021120296.

ORDER

1. Westside Union School District's Motion to Consolidate is granted.
2. Student's Case 2021120662 is designated as the Primary Case. All dates previously set in Student's first filed case, OAH case number 2021120296 are vacated.

3. 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 Primary Case, OAH case number 2021120662.

IT IS SO ORDERED.

Jennifer Kelly

Jennifer Kelly

Administrative Law Judge

Office of Administrative Hearings