BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT, v. PARENTS ON BEHALF OF STUDENT.	OAH CASE NO. 2013040364 (Consolidated with primary case, OAH Case No. 2013031004) ORDER FOLLOWING PRE-HEARING CONFERENCE OF MAY 8, 2013; GRANTING DISTRICT'S REQUEST FOR CONSOLIDATION; GRANTING STUDENT'S REQUEST TO AMEND COMPLAINT; RESETTING HEARING DATES

PROCEDURAL HISTORY

On March 27, 2013, Parents on behalf of Student (Student) filed with the Office of Administrative Hearings (OAH) a Due Process Hearing Request naming the West Contra Costa Unified School District (District) as the respondent. Amongst other issues in this case, Student complained about District provided assessments. This first case was designated OAH case number 2013031004 (first case). On April 9, 2013, District filed a Due Process Hearing Request, naming Student as the Respondent. The sole issue in this case is whether the District is entitled to complete its triennial assessment and behavior assessment of Student without parental restrictions or condition. The second case was designated OAH case number 2013040364 (second case).

On May 3, 2013, District filed a motion to consolidate the first and second cases based upon the matters involving identical parties, similar issues and overlapping witnesses. The Student submitted his opposition on May 7, 2013.

On May 7, 2013, Student submitted a request to amend his complaint. Amongst other issues in the amended complaint, Student alleged an issue pertaining to District provided assessments of Student. The District did not submit an opposition to Student's motion to amend complaint.

On May 8, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Paul H. Kamoroff, OAH. Shawn Olson Brown, Attorney at Law, appeared on behalf of the District. Student's mother (Mother) appeared on behalf of Student. The PHC was recorded.

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].)

The District urges consolidation because the two cases present at least one common issue, District provided assessment of Student. Consequently, witnesses, evidence, and testimony in each case will be similar in both cases, and it would be a waste of resources to have separate proceedings where the second case will effectively overlap the first.

After due consideration, in the furtherance of judicial economy, the District's motion to consolidate is granted. The first case, 2013031004, shall be designated as the primary case for this matter.

AMENDMENT

An amended complaint may be filed when either (a) the other party consents in writing and is given the opportunity to resolve the complaint through a resolution session, or (b) the hearing officer grants permission, provided the hearing officer may grant such permission at any time more than five (5) days prior to 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).)

Student's motion to amend is timely and is granted. The amended complaint shall be deemed filed on the date of this order.

ORDER

1. The District's motion to consolidate is granted. The first case, OAH Case number 2013031004 shall be designated the primary case for this matter.

2. The Student's motion to amend complaint is granted. The amended complaint shall be deemed filed on the date of this order.

3. The hearing dates previously set in the first case and second case, OAH case numbers 2013040364 and 2013031004, are vacated.

4. All applicable timelines shall be reset as of the date of this order. OAH will issue a scheduling order with the new dates.

IT IS SO ORDERED.

Dated: May 09, 2013

/s/
PAUL H. KAMOROFF
Administrative Law Judge
Office of Administrative Hearings