BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

V.

ALAMEDA UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2022040901

ORDER DENYING MOTION TO CONSOLIDATE

MAY 6, 2022

On December 1, 2022, Student filed with the Office of Administrative Hearings a Request for Due Process Hearing in OAH case number 2021120065, naming Alameda Unified School District, called Alameda. This is called the Student's First Case. Student's first amended complaint in Student's First Case was deemed filed on February 24, 2022. On April 11, 2022, Alameda filed a motion to dismiss the fourth issue of Student's first amended complaint. On April 14, 2022, Student opposed the motion to dismiss, and requested leave to amend the first amended complaint as to the fourth issue.

On April 18, 2022, ALJ Marson granted Alameda's motion to dismiss the fourth issue in Student's first amended complaint alleging that Alameda denied Student a free appropriate public education by failing to fund the psychoeducational independent educational evaluation that it had agreed to fund on June 26, 2020, based on the

principles of collateral estoppel and res judicata. (April 18, 2022 Order Granting Motion to Dismiss Issue Number Four and Denying Motion for Leave to Amend Complaint, Student's First Case.) ALJ Marson also denied Student's leave to amend the first amended complaint as to the fourth issue. (*Id.*)

On April 27, 2022, Student filed a Request for Due Process Hearing in OAH case number 2022040091, also naming Alameda. This is called the Student's Second Case. The sole issue in the Student's Second Case is:

> "Whether District, having failed to conduct a full and appropriate assessment of [Student] in 2019, must provide reimbursement to [Student]'s parents for the privately-paid/privately-funded [sic] [independent educational evaluation] by Dr. Carina Grandison less than two years later?" (Complaint, Student's Second Case.)

On May 3, 2022, Student filed a Motion to Consolidate Student's First Case with Student's Second Case arguing that the two cases involve the common questions of law and facts. Student contends that the same witnesses and documents will be presented in both cases.

On May 6, 2022, Alameda filed an opposition to consolidation on the grounds that the issue in Student's Second Case was substantively the same issue four in Student's first amended complaint which ALJ Marson dismissed under the principles of collateral estoppel and res judicata.

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].)

Here, consolidation is not appropriate as this did not involve Student and Alameda filing separate cases involving common questions of law and fact where judicial economy will be had by consolidating the two cases. The proper vehicle to add issues to Student's First Case would be to file an amended complaint. Student's request for leave to file an amended complaint to the fourth issue of Student's First Case, which included substantively the same issue in Student's Second Case—funding Dr. Grandison's assessment, was denied by ALJ Marson. ALJ Marson specifically stated in the April 18, 2022 order that:

> "[O]ne of the resolutions sought in the first amended complaint is reimbursement by Alameda of the costs of Dr. Grandison's assessment. Nothing prevents Student from seeking that relief without amending his complaint." (April 18, 2022 Order Granting Motion to Dismiss Issue Number Four and Denying Motion for Leave to Amend Complaint, Student's First Case.)

Student's consolidation motion is an end-run around ALJ Marson's dismissal of Student's fourth issue of the first amended complaint in Student's First Case. Further, Student's consolidation motion is a disguised motion to amend on the same substantive issue, which ALJ Marson had already denied, and already before the United States District Court regarding Student's appeal of the Decision in OAH Case No. 2020080339). (*P.G. v. Alameda Unified School Dist.* (N.D. Cal. Apr. 28, 2022, Case No. 21-cv-01529-EMC(LB)) 2022 WL 1266028.) Therefore, Student's motion to consolidate is denied.

ORDER

1. Student's Motion to Consolidate is denied.

IT IS SO ORDERED.

Sabrina Kong

Sabrina Kong
Administrative Law Judge
Office of Administrative Hearings