BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
IRVINE UNIFIED SCHOOL DISTRICT,	OAH Case No. 2017090927
v.	ORDER DENYING MOTION TO CONSOLIDATE
PARENT ON BEHALF OF STUDENT.	

On May 12, 2017, Student filed with the Office of Administrative Hearings a Request for Due Process Hearing in OAH case number 2017050692 (Student's Case), naming Irvine Unified School District.

On September 22, 2017, District filed a Request for Due Process Hearing in OAH case number 2017090927 (District's Case), naming Student.

On September 22, 2017, District filed a Motion to Consolidate District's Case with Student's Case.

On September 26, 2017, Student filed an objection to consolidation on the grounds that the two actions do not share commons questions of law or fact, that consolidation would excessively postpone resolution of Student's issues, and that District's case was filed prematurely.

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].)

Student's Case and District's Case do not involve common questions of law or fact. Specifically, Student's case alleges that District failed to assess Student in all areas of suspected disability and that the educational program offered to her for the 2016-2017 school year was different from the successful program which had previously been provided to her and therefor represented a denial of a free appropriate public education. District's action asserts that the educational program being offered to Student for the 2017-2018 school year

constitutes FAPE and could be implemented without Parent's agreement to the plan. District acknowledges the fact that the time periods involved in the two cases are different, but notes that some aspects of the two plans, such as the directed math and English classes, are the same. Although there is some merit in the argument, it assumes that a retrospective placement and a prospective placement are judged by the same standards and on the same facts. Further, a substantial part of Student's case has no relation to District's case. Student's assessment claims are distinct and her objection to the change in her educational program in 2016-2017 are distinct from District's asserting that the program offered following the IEP team meeting on September 21, 2017, represented FAPE. District is correct that the cases involve the same parties, a factor favoring consolidation of the matters. However, the fact that there is some similarity in the issues and that the cases involve the same parties is not sufficient in itself to justify consolidation.

District argues that it will be economical to consolidate the issues, since a number of witnesses would have to testify at both hearings, whereas consolidation would enable the matter to be resolved in a single hearing. Parent objects that consolidation would bring delay,[1] and this matter has been pending for four months. In addition, Parent notes that District's case was filed the day after the IEP team meeting at which the FAPE offer was made, which allowed little time for Parent to consider and respond to the offer. Considered as a whole, consolidation does not offer judicial economy. To the degree that there is similarity of the issues, resolution of Student's case will settle the questions presented in District's case. As a consequence, the entire second hearing may not be necessary, conserving the time of the parties, witnesses, counsel, and the ALJ.

Student's case was continued once following request by District on June 12, 2017. Student objects to further delay. Finding little similarity in the issues and a reasonable possibility that District's filing may be resolved either by the outcome of Student's case or by allowing the parties to consider the merits of a dispute less than a week old, District's motion to consolidate the matters is DENIED. All dates previously set for hearing in this matter shall remain as scheduled.

DATE: September 28, 2017

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Peter Paul Castillo for
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CHRIS BUTCHKO
Administrative Law Judge
Office of Administrative Hearings

[1] District has not proposed that the consolidated matter proceed to hearing on the dates established for Student's case.