BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. MCKINLEYVILLE UNION SCHOOL DISTRICT AND HUMBOLDT COUNTY OFFICE OF EDUCATION	OAH CASE NO. 2013080004
HUMBOLDT COUNTY OFFICE OF EDUCATION, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 20103051098 ORDER GRANTING MOTION TO CONSOLIDATE

On May 28, 2013, the Humboldt County Office of Education (HCOE) filed a request for due process hearing (complaint) in Office of Administrative Hearings (OAH) case number 2013051098 (First Case), naming Student and his Grandparents, who are his guardians.

On July 30, 2013, Student, through Grandparents, filed a complaint in OAH case number 2013080004 (Second Case), naming the McKinleyville Union School District (District) and HCOE.

On August 6, 2013, Student filed a Motion to Consolidate the First Case with the Second Case. On August 13, 2013, HCOE filed an objection to consolidation on the grounds that Student had delayed in filing the Second Case, that the commonality of issues was insignificant, and that denial of consolidation would facilitate settlement.

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].)

Here, the First Case and Second Case involve a common question of law or fact, specifically, whether HCOE's social-emotional assessment of Student, conducted by HCOE's school psychologist, Dr. Peter Stoll, on or about May 6, 2013, was appropriate and adequate to support the denial of Student's request for a residential placement. The First Case alleges only that the assessment was appropriate and that HCOE should not be required to pay for an independent educational assessment (IEE). The Second Case alleges that HCOE and the District have denied Student a free appropriate public education (FAPE) based largely upon inadequate assessment by Dr. Stoll.

Consolidation furthers the interests of judicial economy. The appropriateness of Dr. Stoll's assessment involves some witnesses who will testify that the assessment was not appropriate and was insufficient to support rejection of a residential placement. Student represents that his principal expert, Dr. Carren Jean Stika of San Diego, would have to travel to Humboldt County twice at Student's guardians' expense if consolidation is not granted. Other participants would also have to travel to Humboldt County twice in the absence of consolidation.

HCOE opposes consolidation on the ground that Student was late in filing his own action; that the First Case is short and involves a single issue, while the Second Case is long and involves many issues; and that separate hearings would facilitate settlement.

The First Case was filed on May 28, 2013. By June 11, 2013, Student's Grandparents were in the process of obtaining counsel, who filed an appearance on June 17, 2013. This did not constitute undue delay.

Student filed the Second Case six weeks later, on July 30, 2013, and moved to consolidate on August 6, 2013. HCOE argues this was undue delay. However, the complaint in the Second Case addresses a period of three school years during which Student was in and out of several placements including the Juvenile Court, a group home, and three different school districts. Six weeks is not an unreasonable time to investigate and present a complaint addressing those complex circumstances. More importantly, HCOE does not argue that any prejudice was caused by this delay. In addition, it makes no effort to argue that prejudice of any kind will be caused by granting the motion to consolidate. HCOE only represents that it has a right to a prompt resolution. While that is true, it applies to every case and hardly justifies two hearings in Humboldt County instead of one.

Student characterizes his complaint as raising two issues relating to different school years. HCOE characterizes it as raising 38 issues, only one of which relates to the appropriateness of the assessment it seeks to validate. It is not necessary to resolve that dispute; it is enough to observe that the essential dispute between the parties is whether Student needs a residential placement, and the view of HCOE and the District that he does not rests primarily on Dr. Stoll's assessment. The two cases are substantially related no matter how the issues are counted.

Finally, HCOE argues that having a separate hearing on its assessment will somehow facilitate settlement because it may resolve "some of Student's multiple claims" in Case Two. This is inconsistent with its earlier argument that only one of the 38 issues overlap, and correctly suggests that the relationship between the two cases is more substantial than HCOE's issue-counting would suggest. HCOE does not explain how settlement would be facilitated by separate cases, and has previously been unwilling to participate in mediation. Shortly after filing the First Case on May 28, 2013, HCOE unilaterally cancelled the mediation then set for June 11, 2013, requested that it not be rescheduled, and stated: "HCOE intends to proceed directly to a due process hearing regarding this matter." HCOE does not mention whether it intends to appear at the mediation now set for September 3, 2013, in the second case. HCOE's new interest in settlement of these matters is unpersuasive as a ground for denying consolidation.

Because there are substantial common issues of law and fact in the two matters, and because HCOE cannot demonstrate that it will suffer any prejudice from consolidation, the matters will be consolidated.

ORDER

1. Student's Motion to Consolidate is granted.
2. All dates previously set in OAH Case Number 2013051098 (First Case) 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 OAH Case Number 2013080004 (Second Case), and the dates now calendared in that matter are confirmed.

Dated: August 12, 2013

/s/
CHARLES MARSON
Administrative Law Judge
Office of Administrative Hearings