BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: NEWPORT-MESA UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2017020239 ORDER DENYING MOTION TO CONSOLIDATE

On May 4, 2016, Student filed with the Office of Administrative Hearings a Request for Due Process Hearing in OAH case number 2016050515, naming Newport-Mesa Unified School District. On August 16, 2016, Student filed with OAH a Request for Due Process Hearing in OAH case number 2016080996, naming District. OAH consolidated Student's two cases (Student's Case) on September 1, 2016.

On February 3, 2017, District filed a Request for Due Process Hearing in OAH case number 2017020239 (District's Case), naming Student.

On February 3, 2017, District filed a Motion to Consolidate District's Case with Student's Case.

On February 5, 2017, Student filed an objection to consolidation on the ground that District's Case relates to an individualized education program developed after the IEP at issue in Student's case and that the IEP to which District's case relates has not yet been completed.

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].)

Here, District's Case and Student's Case do not involve a common question of law or fact. Specifically, Student's Case concerns whether District denied Student a free appropriate public education in the November 2015 annual IEP and its March 2016

addendum/amendment by failing to offer Student applied behavior analysis services and a 2:1 behavior aide between August 2, 2016 and September 6, 2016. District's Case concerns whether District offered Student a FAPE in the November 2016 IEP. Student's Case and District's Case involve different IEPs related to different time periods.

A school district's determinations regarding special education are based on what was objectively reasonable for the district to conclude, given the information the district had at the time of making the determination. A district cannot "be judged exclusively in hindsight," but instead "an IEP must take into account what was, and what was not, objectively reasonable . . . at the time the IEP was drafted." (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrman v. East Hanover Bd. of Education* (3d Cir. 1993) 993 F.2d 1031, 1041.). District's Case alleges that information regarding events of August 2015 were a factor in District's offer of special education and related services in November 2016. However, District may defend against Student's Case regarding the November 2015 and March 2016 IEP without a determination of whether the November 2016 annual IEP offered Student a FAPE. The two cases do not necessarily involve a common question of law or fact. The outcome of Student's Case does not create a risk of inconsistent rulings in Student's Case and District's Case because the two cases concern whether District's offers of special education and related services were each appropriate at different moments in time. While District might desire to present evidence regarding the events of August 2015 as well as August 2016 to support its contention that its offer of special education and related services made in November 2016 was reasonably calculated to confer some educational benefit on Student, the single factual question of whether Student's behavior did or did not regress due to behavior services in August 2015 is not determinative of District's Case and is insufficient to support consolidation of District's Case and Student's Case.

ORDER

District's Motion to Consolidate is denied.

DATE: February 7, 2017

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Kara Hatfield
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KARA HATFIELD
Administrative Law Judge
Office of Administrative Hearings