BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SOUTH PASADENA UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2013020084 ORDER DENYING DISTRICT'S MOTION TO CONSOLIDATE AND CONTINUE

On May 1, 2013, District filed a complaint for due process naming Student as respondent (OAH Case No. 2013050072). District also filed a motion to consolidate the new complaint with Student's case (OAH Case No. 2013020084), and sought a continuance of both matters. District's motion was not supported by a declaration under penalty of perjury or any authenticated evidence. Student filed an opposition on May 2, 2013.

District's complaint and motion was filed concurrently with a withdrawal of District's first case against Student filed on April 12, 2013 (OAH Case # 2013040670) (District's original case), in which District also sought consolidation and a continuance with this case. On April 22, 2013, District's first motion for consolidation and continuance was considered by the undersigned ALJ following oral argument during the prehearing conference (PHC). During the PHC, Student's counsel stated on the record that Student was prepared to and wanted to proceed to hearing on her case, as scheduled. The undersigned ALJ denied District's motion to consolidate and for a continuance and issued an order to that effect following the PHC.

APPLICABLE LAW

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].)

A due process hearing must be held, and a decision rendered, within 45 days of receipt of the complaint, unless a continuance is granted for good cause. (Ed. Code, §§ 56502, subd. (f) & 56505, subd. (f)(1)(C)(3).)

DISCUSSION AND ORDER

Student's case, which was filed on February 4, 2013, alleges that Student's parent (Parent) requested in writing in January 2012 that District assess Student for special education services; that District declined to do so; and that District procedurally violated the Individuals with Disabilities Education Act (IDEA) and denied Student a free appropriate public education (FAPE) by failing to assess her for special education eligibility. Student seeks an independent educational evaluation and compensatory services as her proposed remedy. District's new case alleges 1) that it did not deny Student a FAPE by failing to assess Student in January 2012, and 2) that Parents failed to sign and return an assessment plan offered by District on March 6, 2013, one month after Student filed her complaint, entitling District to an order determining District's right to assess Student.

District has attempted to plead around the undersigned ALJ's prior order that consolidation of Student's case and District's original case was not warranted under the facts, by withdrawing District's original case, filing a new one, and adding as a second issue in its new complaint its defense to Student's case. District did so only three business days before the start of hearing in Student's case, after the PHC, and after Student elected at the PHC to go forward with her case as scheduled.

Aside from District's "new issue," the two cases pertain to materially different time frames and different facts. Student's case relates to facts that occurred before she filed her complaint on February 4, 2013 and seeks findings as to whether the District violated the IDEA by failing to assess and find Student eligible for special education up to the date of filing. On the other hand, District's case primarily relates to facts that occurred on or after March 6, 2013 and seeks an order compelling Parents to agree to an assessment plan. The issues are different, the parties seek different remedies that do not conflict with each other, and the two cases do not necessarily involve the same witnesses, evidence or law such that it would be judicially economical to hear both matters at the same time. District has not offered any credible reason why Student's case, which is ripe for hearing, should not go forward or how a finding on District's liability in Student's case will prejudice the District in its case, given the principles of res judicata and collateral estoppel. Additionally, the issues in Student's case are ripe for hearing, and District has not demonstrated good cause for continuing the hearing dates in Student's case.

Accordingly, District's motion for consolidation and continuance is denied and all hearing dates in both cases shall remain as scheduled, unless otherwise ordered.

IT IS SO ORDERED.

Dated: May 2, 2013

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings