BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. DOWNEY UNIFIED SCHOOL DISTRICT,	OAH Case No. 2016040358
DOWNEY UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT,	OAH Case No. 2016020536
DOWNEY UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2016031078 ORDER GRANTING MOTION TO CONSOLIDATE AND GRANTING MOTION TO CONTINUE

On February 11, 2016, Downey Unified School District filed with the Office of Administrative Hearings a Request for Due Process Hearing in OAH case number 2016020536 (District's FAPE Case), naming Student.

On March 21, 2016, District filed a Request for Due Process Hearing in OAH case number 2016031078 (District's Assessment Case), naming Student.

On April 6, 2016, Parent filed a Request for Due Process Hearing in OAH case number 2016040358 (Student's Case), naming District.

On April 6, 2016, Student filed a Motion to Consolidate Student's Case with District's FAPE Case and District Assessment Case, and to continue the due process hearing date set for District's cases.

District opposed the motion.

APPLICABLE LAW AND DISCUSSION

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 the same parties or a common question of law or fact, or 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, Student's Case and District's cases involve common questions of law or fact. Student's case and District FAPE case both concern whether the program and placement for Student decided at the March, May, June, and September 2015 IEP team meetings constituted an offer of a free and appropriate public education in the least restrictive environment. Student's case also challenges the appropriateness of the District's psychoeducational assessment, which is at issue in District's Assessment Case. In addition, consolidation furthers the interests of judicial economy because it will allow three overlapping actions to be heard at one time. In addition to the judicial economy, consolidation will be significantly more convenient for the witnesses, several of whom may be called for testimony in multiple matters. All of District's witnesses for the FAPE case are likely to be relevant to Student's case, and at least Kathi Thompson, District's school psychologist, is a likely witness for all three cases.

District opposed the motion,[1] arguing that the request was made too close to the start of hearing in District's FAPE case. In addition, District asserted that consolidation of Student's case would introduce additional unrelated issues to the hearing that will overly complicate the hearing and not result in judicial economy. The timing of Student's filing and the fact that student has previously been granted a continuance in District's FAPE case is a consideration in weighing the request, but not determinative. District has not made any showing that Student's education or District's interests would be prejudiced by continuing the hearing because of consolidation. District's arguments that judicial economy will not be served by consolidation are not persuasive. The cases clearly involve common matters and personnel. District's position that the 2016 IEP introduced in Student's Case is entirely an unrelated matter is not well-founded. Student states that the 2016 IEP contains the same placement and services as in 2015. This similarity is sufficient to render the matters similar even if, as noted by District, some of personnel who attended the 2015 IEP meeting did not attend in 2016. Because the similarities overwhelm the difference between the cases, judicial

1. In addition to its Opposition, District has filed a six-page sur-reply, which has been considered. Other than a change to the caption and to the Procedural History section, the only noticeable difference between the Opposition and sur-reply is the insertion of the word "lengthy" before "continuance" in the Argument section.

economy and witness convenience will be served by consolidating the matters. Accordingly, consolidation is granted.[2]

ORDER

IF GRANTING MOTION TO CONSOLIDATE

1. Student's Motion to Consolidate is granted.
2. All dates previously set in OAH Case Number 2016020526 and OAH Case Number 2016031078 are vacated. Student's Case, OAH Case Number 2016040358, is designated as the primary matter, and all filings are to be directed to that case number.
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 2016040358. All dates in this matter are as set in the April 13, 2016, Scheduling Order in that case.

DATE: April 13, 2016

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Chris Butchko
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CHRIS BUTCHKO
Administrative Law Judge
Office of Administrative Hearings

[2] Student's continuance request is moot since Student's case is the primary case.