BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. ABC UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2013020685 ORDER DENYING MOTION TO CONSOLIDATE

On February 15, 2013, Student filed a request for due process hearing in Office of Administrative Hearings (OAH) case number 2013020685 (First Case), naming the ABC Unified School District (District). The First Case is currently set for hearing on May 15, 16, and 20, 2013.

On April 12, 2013, the District filed a request for due process hearing in OAH case number 2013040604 (Second Case), naming Student. That case is set for hearing on May 9, 2013.

On April 16, 2013, the District filed a motion to consolidate the First Case with the Second Case.

On April 19, 2013, Student filed an opposition to the motion to consolidate. Student objects to the consolidation and is concerned that it will delay the First Case. The First Case has already been continued once at the District's request. Both Student and the District have made motions to dismiss each other's cases (which will be addressed in separate OAH orders).

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].)

The sole issue remaining to be heard in the First Case is whether the District denied Student a free appropriate public education (FAPE) when it refused to offer Student a residential treatment center (RTC) placement at her individualized education program (IEP) meeting held on January 15, 2013.

The District's two issues in the Second Case are: 1) Whether the District ceased being Student's local education agency (LEA) from the time of Student's release from College Hospital (on or about March 26, 2013), to the date of a decision by OAH in the Second Case; and 2) Whether the District was relieved from developing or implementing an IEP for Student during that same time period.

Here, the First Case and Second Case do not involve a common question of law or fact. Student's case addresses one very specific time period – during January 2013 when Student had been placed in a specific psychiatric hospital and was within the District's jurisdiction.

The District's case involves a different time period – on and after March 26, 2013, when Student was no longer in that hospital.

Student's case has been pending since February and is set for hearing in May. It was originally set for an earlier hearing, but was continued at the request of the District (over Student's objection). Combining the two cases will not serve the interests of justice or judicial economy under these circumstances – consolidation will complicate the hearing on the First Case by adding issues that could require additional hearing days or even necessitate another continuance. Student is entitled to a rapid decision on the First Case.

Although the District's argument on consolidation is somewhat ambiguous, the District appears to believe that the two cases are related because a decision in the District's favor in the Second Case will block any compensatory remedy in the First Case. If that is the District's argument, it is of doubtful merit. Any obligation the District may or may not have had toward Student to provide a FAPE on and after March 26, 2013, would be separate from an obligation to provide a compensatory remedy ordered by OAH in the First Case. That argument does not provide a sufficient basis to consolidate the cases.

ORDER

1. The District's motion to consolidate is denied.
2. All dates in both cases remain on calendar as currently set.

Dated: April 25, 2013

/s/
SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings