BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. ANAHEIM UNION HIGH SCHOOL DISTRICT,	OAH Case No. 2019021085
ANAHEIM UNION HIGH SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2019030675 ORDER DENYING REQUEST TO DISMISS; GRANTING MOTION TO CONSOLIDATE; AND DESIGNATING STUDENT'S CASE AS LEAD CASE

On February 28, 2019, Student filed with the Office of Administrative Hearings a Request for Due Process Hearing in OAH case number 2019021085 (Student's Case) naming Anaheim Union High School District. On March 8, 2019, OAH granted Student's motion to amend her due process complaint to include additional issues, and deemed her amended complaint filed on that date. Student's Case is scheduled for hearing beginning April 30, 2019.

On March 18, 2019, Anaheim filed Request for Due Process Hearing in OAH case number 2019030675 (Anaheim's Case), naming Student. Anaheim's Case is scheduled for hearing beginning April 16, 2019.

On March 18, 2019, Anaheim filed a Motion to Consolidate the two matters and to proceed to hearing on the dates set for Student's Case.

On March 22, 2019, Student filed an objection to consolidation on the grounds that Anaheim's complaint should be dismissed as it includes false and misleading information; seeks to defend assessments when Student has not officially requested independent educational evaluations; and raises the same issues identified by Student in her complaint. Student's filing is also deemed to be a motion to dismiss.

APPLICABLE LAW

Dismissal

The purpose of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education", and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

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].)

DISCUSSION

Anaheim identifies two issues for hearing. In its first issue, Anaheim seeks a determination that its December 2018 multidisciplinary assessment of Student is legally compliant such that Student is not entitled to publically funded independent educational evaluations in the areas assessed. In its second issue, Anaheim seeks a determination that its December 17, 2018 individualized education program offered Student a free appropriate education in the least restrictive environment such that it may implement it without parental consent, and may be relieved of its obligation to provide special education and related services if Parent refuses to allow student to attend school.

OAH has jurisdiction over Anaheim's complaint. Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction, special education law does not provide for a summary judgment procedure, which would require a ruling on the merits of the complaint, prior to an evidentiary hearing. Here, Student's motion is not

limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits. Student failed to provide any legal authority that would require OAH to hear and determine the equivalent of a motion for summary judgment without first affording Anaheim the opportunity to develop a factual record at hearing.[1] Accordingly, the motion to dismiss is denied.

Student's complaint also places at issue the sufficiency of the December 2018 IEP which fails to offer home hospital instruction and occupational therapy. Student raises additional issues during the 2018-2019 school year including Anaheim's failures to implement her IEP; to allow Parents to inspect Student's school files; to properly notice and convene IEP team meetings with all required participants; and to provide Parents with all IEP documents. Student's Case and Anaheim's Case involve common questions of law and fact. Therefore, consolidation is warranted and will prevent the risk of inconsistent rulings. In addition, consolidation furthers the interests of judicial economy because both cases involve the same parties, and many of the same witnesses will be required to testify in each proceeding. Each matter will also involve the introduction of many of the same documents. Accordingly, consolidation is granted.

When consolidating cases, OAH designates the statutory timelines applicable to the consolidated matters to be controlled by one of the cases. Here, the statutory timelines shall be controlled by Student's Case.

ORDER

1. Student's motion to dismiss Anaheim's Case is denied.
2. Anaheim's Motion to Consolidate is granted.
3. All dates previously set in OAH Case Number 2019030675, Anaheim's Case, are vacated.
4. The consolidate matter shall now proceed on the dates scheduled for Student's Case. The prehearing conference shall be held on April 22, 2019, at 10:00 a.m., and the due process hearing shall be held on April 30, 2019, at 9:30 a.m., May 1 and 2, 2019, at 9:00 a.m., and continue day to day as needed at the discretion of the Administrative Law Judge.

[1] Nothing in this Order prevents Student from asserting as a defense at hearing that she did not request independent educational evaluations or from formally withdrawing what Anaheim has determined to be a March 13, 2019 request for independent evaluations.

5. 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 2019021085, Student's Case.

IT IS SO ORDERED.

DATE: March 27, 2019

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Theresa Ravandi
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THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings