BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENTS ON BEHALF OF STUDENT, v. DEHESA ELEMENTARY SCHOOL DISTRICT AND COMMUNITY MONTESSORI CHARTER SCHOOL,	OAH Case No. 2016030188
DEHESA ELEMENTARY SCHOOL DISTRICT AND COMMUNITY MONTESSORI CHARTER SCHOOL, v. PARENTS ON BEHALF OF STUDENT.	OAH Case No. 2016050107 ORDER FOLLOWING PREHEARING CONFERENCE OF MAY 16, 2016; ORDER GRANTING DISTRICT'S MOTION TO CONSOLIDATE

On May 16, 2016, a telephonic prehearing conference was held before Administrative Law Judge Darrell Lepkowsky, Office of Administrative Hearings. Jennifer Varga, Attorney at Law, appeared on behalf of Parents on Behalf of Student. Deborah R.G. Cesario, Attorney at Law, appeared on behalf of the Dehesa Elementary School District and the Community Montessori Charter School (collectively, Districts). The ALJ recorded the PHC.

Based upon discussion with the parties, the ALJ issues the following order:

Districts' Motion to Consolidate

Student filed a request for due process hearing (complaint) on April 29, 2016. His complaint raises three issues. Student first alleges that Districts unilaterally changed his placement. Student's second issue alleges that Districts' offer of placement in other than general education with sufficient supports denied him a free appropriate public education. Lastly, Student alleges that Districts have prevented Parents from meaningfully participating in Student's IEP process in several specified ways.

Districts filed a complaint on April 26, 2016, raising three issues. The first is whether its January 6, 2016 individualized education program offered Student a FAPE such that

Districts may implement it without Parents' consent. Second, whether Districts are required to fund an independent educational evaluation in the area of speech and language and, if so, must Districts pay more than what is permitted under their present cost criterion? The third issue is whether Districts may assess Student without Parents' consent.

On May 11, 2016, Districts filed a motion to consolidate their case with that of Student. At the prehearing conference held on May 16, 2016, Student indicated that he did not object to consolidating the cases.

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].)

Both Student's case and Districts' case raise issues regarding the appropriateness of Districts' offers of placement. The issues raise common questions of both fact and law, and will involve similar evidence and witnesses. Consolidation of the cases, as requested by Districts, will further the interests of judicial economy by avoiding the necessity of separate hearings. Student does not oppose consolidation. For these reasons, Districts' motion to consolidate is granted.

Outstanding Issues

1. On May 12, 2016, Student filed a motion to dismiss issues two and three in Districts' complaint. Districts shall file a response to the motion no later than 5:00 p.m. on Tuesday, May 17, 2016.

2. Location of the hearing: The hearing is presently scheduled to take place at the offices of the Dehesa Elementary School District, which is over 50 miles from Student's home. Districts are investigating whether the Community Montessori Charter School has appropriate office space close to Student's home that meets ADA certification requirements and has enough space to hold the hearing. Districts shall make that determination and meet and confer with Student's attorney no later than 5:00 p.m. on Thursday, May 19, 2016. If Districts do not have an appropriate location near Student's home, or if the parties cannot mutually agree to hold the hearing at the alternate site contemplated by Districts, the hearing will be re-scheduled to be held at the OAH offices at 1350 Front Street, Suite 3005, San Diego, California, 92101. Districts shall file a notification with OAH regarding the hearing location no later than 5:00 p.m. on Friday, May 20, 2016.

ORDER

1. Districts' motion to consolidate is granted.
2. All dates presently set in Districts' case, OAH case number 2016050107, are vacated.
3. This consolidated matter shall proceed to hearing on the dates presently set in Student's case, OAH case number 2016030188, as follows:

   Telephonic Prehearing Conference: June 6, 2016, at 3:00 p.m.

   Due Process Hearing: June 14 through 16, 2016, starting at 9:30 a.m. on June 14, 2016, and at 9:00 a.m. all other days, and continuing day to day, Monday through Thursday, at the discretion of the ALJ.
4. 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 2016030188 [Student's Case].

DATE: May 16, 2016

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Darrell Lepkowsky
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DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings