BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

IRVINE UNIFIED SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NUMBER 2024040139

NOTICE OF NO ACTION ON REQUESTS TO RESET TIMELINES AND DELAY RULING ON CONSOLIDATION; AND ORDER DENYING MOTION TO CONSOLIDATE

APRIL 17, 2024

On April 3, 2024, Irvine Unified School District filed a Request for Due Process Hearing, with the Office of Administrative Hearings, naming Student as respondent. On April 3, 2024, Irvine also filed a motion to consolidate the case with Student's previously filed case. Student had filed a request for due process naming Irvine as respondent on October 5, 2024 in OAH case number 2023100216.

The attorney representing Student filed a late objection to consolidation on Parent's behalf on April 10, 2024. Acknowledging the opposition was late, without explanation, Counsel asked that the opposition be considered. Counsel argued Student

had not been served with the due process complaint in the underlying action and that Student was not represented in the case Irvine filed. No mention was made of whether Parent had been served with the consolidation motion. Despite asserting that Student was not represented, Counsel argued that "this matter should be extended, and hearing dates reset based on District's failed to properly serve the parent. Counsel further argued that consolidating Irvine's case with Student's would simply delay Irvine's case as the issues and timelines did not overlap. On April 15, 2024, Irvine filed a reply to Student's opposition.

NOTICE OF NO ACTION ON REQUEST TO RESET TIMELINES OR DELAY RULING ON CONSOLIDATION DUE TO FAILURE TO SERVE PARENT

Student's counsel argues that she does not represent Student in District's case, but makes substantive arguments on Student's behalf regarding service of process, and resetting timelines.

Student's counsel offered no declaration from Parent stating she had not been served with the complaint in this action. The only evidence offered regarding service was a hearsay statement in Counsel's declaration which said, "I have learned that the parent has not been served with due process in the District-filed case, OAH No. 2024040139." Counsel's declaration fails to identify the source of this information or when the information was discovered. Student's counsel failed to address the fact that the proof of service for the complaint in Irvine's case and the motion to consolidate the cases confirmed service on Parent as well as on Student's counsel. Irvine did not assume that Student's counsel would automatically be representing Student in the case Irvine filed. The hearsay statement asserted as proof that Parent was not served is not reliable. The sworn proof of service remains undisputed.

Moreover, Student's counsel cannot have it both ways. Either her filing in this matter constitutes Student's general appearance through counsel, or it does not. Counsel may argue against consolidation to the extent consolidation impacts Student's case. However, absent representation, she is not entitled to argue for any remedy for Parent due to a lack of service of process.

OAH will take no action on any request in Student's opposition to the consolidation motion asking that timelines be reset or that there be a delay in ruling on this motion.

CONSOLIDATION

No statute or regulation specifically provides a standard to be applied in deciding a motion to consolidate special education cases. However, OAH will generally consolidate matters that involve the same parties, a common question of law and/or fact, 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].)

Student's assertion that the cases do not overlap as to time or subject matter is not persuasive. Irvine seeks to consolidate a case in which the issue is whether its January 2024 multidisciplinary assessments met legal standards. Issue six in Student's case asks whether Irvine conducted necessary assessments in all areas of suspected disability for the 2024 triennial assessment. Clearly, these issues overlap and would require the testimony of the same witnesses and consideration of overlapping evidence.

However, despite the overlap of the issues, consolidation of the cases is not appropriate as Parent is not represented in District's case. Consolidation would require

that Parent have legal fees imposed that she has not chosen. If the cases were consolidated, it would be difficult to separate witness examination on the assessment issue. Therefore, under these circumstances, consolidation will not be granted.

ORDER

1. Irvine's Motion to Consolidate is denied.
2. The cases shall proceed separately as currently scheduled.

IT IS SO ORDERED.

Penelope Pahl

Penelope S. Pahl
Administrative Law Judge
Office of Administrative Hearings