BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. LOS ANGELES UNIFIED SCHOOL DISTRICT,	OAH Case No. 2019010254
LOS ANGELES UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2019020545 ORDER DENYING MOTION TO CONSOLIDATE

On January 8, 2019, Parent on behalf of Student filed a Request for Due Process Hearing in OAH case number 2019010254 (Student's First Case), naming Los Angeles Unified School District as respondent. On February 13, 2019, Los Angeles Unified filed a Request for Due Process Hearing in OAH case number 2019020545 (Los Angeles Unified's Case), naming Parents on behalf of Student as respondents. Los Angeles Unified concurrently filed a motion to consolidate the two cases asking that the cases proceed on dates currently scheduled in Student's case. On February 19, 2019, Student filed a notice that he did not oppose the consolidation. OAH granted consolidation on February 20, 2019, designating Student's case as primary (the Consolidated Cases).

Student filed a prehearing conference statement on April 17, 2019 in anticipation of the scheduled prehearing conference in the Consolidated Cases on April 22, 2019. Student's PHC statement included a new issue that was not raised in Student's complaint. On April 22, 2019, OAH held a telephonic PHC in the Consolidated Cases. At Student's request, in order to accommodate Student's expert witness's availability, the undersigned ALJ granted a two-week continuance of the hearing, after considering objection by Los Angeles Unified's attorney. The subject of the new issue was also raised by the ALJ. Los Angeles Unified objected to the addition of a new issue, on the ground that adding the issue resulted in amending Student's complaint, which required a mandatory resolution session, which Los Angeles Unified did not waive. Student's attorney acknowledged on the record that the omission of the new issue in Student's complaint was an error on her part. The undersigned

ALJ denied Student's request to amend Student's complaint in the Consolidated Cases. The PHC Order included a directive that any motions filed after three days before the PHC required a declaration establishing good cause.

On April 24, 2019, Student filed another complaint, in OAH case number 2019041231 (Student's Second Case). Student concurrently filed motion to consolidate Student's Second Case with the Consolidated Cases. Student's attorney did not support the motion with a declaration establishing good cause, as ordered in the April 22, 2019 PHC Order. Los Angeles Unified timely filed an opposition to the motion to consolidate on April 29, 2019, arguing in part that the motion was untimely, would deprive Los Angeles Unified the right to proceed to hearing on its complaint in a timely manner, and, if granted, consolidation would necessitate a delay in the hearing in the Consolidated Cases because the Student's Second Complaint would require a resolution session before proceeding to hearing, which Los Angeles Unified declined to waive.

Student's Second Complaint alleges five sub-issues, all of which are derived from a Settlement Agreement reached at an informal dispute resolution session between Student's parents and a representative of Los Angeles Unified in or about January 2018. Student contends the Settlement Agreement constituted a denial of FAPE, and seeks an order voiding the Settlement Agreement.

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].)

Initially, Student's motion to consolidate is untimely and not supported by a declaration establishing good cause why the amended complaint and motion to consolidate were not filed at least three business days before the PHC in the Consolidated Cases. Student's attorney was aware of the issue at least at the time she prepared and filed the PHC statement, but she did not seek to file an amended complaint, or file a new complaint and motion to consolidate in a timely manner.

Next, Student's Second Case, Student First Case and Los Angeles Unified's Case do not involve a common question of law or fact. The Consolidated Cases involve the right to assess Student (Los Angeles Unified's Case), and numerous issues (Student's First Case) as to whether Los Angeles Unified denied Student a free appropriate public education by failing to offer related services, failing to implement Student's compensatory education services, failing to appropriately assess Student, and revoking an offer to fund independent educational evaluations. Student's Second Case involves the validity and revocation of a settlement agreement reached between Parents and Los Angeles Unified as part of an informal dispute resolution session. The new claim does not involve any of the FAPE issues

in the instant consolidated matter. Student has not established that Student's Second Case is dependent on the same facts, witnesses, and evidence as in the Consolidated Cases. Student has not established that Student's Second Case concerns any of the issues in the Consolidated Cases such that resolution of the Second Case could result in inconsistent rulings.

Finally, consolidating Student's Second Case with the Consolidated Cases will result in further delay in the hearing in the Consolidated Cases, which Los Angeles Unified opposes. Student has not established that the interests of justice would be served by consolidating Student's Second Case with the Consolidated Cases.

Therefore, for all the reasons discussed above, the motion is denied. All dates are confirmed.

IT IS SO ORDERED.

DATE: April 30, 2019

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Adrienne L. Krikorian
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ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings