BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:

PARENT ON BEHALF OF STUDENT,

and

SAN DIEGO UNIFIED SCHOOL DISTRICT,

OAH CASE NUMBER 2024020608

OAH CASE NUMBER 2024040252

ORDER GRANTING MOTION TO CONSOLIDATE

APRIL 16, 2024

On February 16, 2024, San Diego Unified School District filed with the Office of Administrative Hearings, referred to as OAH, a Request for Due Process Hearing in OAH case number 2024020608, District's Case, naming Parent on behalf of Student.

On April 4, 2024, Student filed a Request for Due Process Hearing in OAH case number 2024040252, Student's Case, naming San Diego Unified.

On April 8, 2024, Student filed a Motion to Consolidate the two cases.

On April 10, 2024, San Diego Unified filed an objection to consolidation on the grounds that the two cases do not involve common issues, nor will the same witnesses and evidence be needed for the two cases. Student filed a reply brief on April 12, 2024.

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].)

Here, San Diego filed its complaint on February 16, 2024. The complaint sought adjudication of two issues. The first issue sought an order finding that San Diego Unified's May 2, 2023 "psychoeducational assessment" was appropriate and justified denial of an independent evaluation at public expense. The second issue sought an order determining if Student required a speech and language assessment as set forth in a January 30, 2024, assessment plan.

Student's case, filed on April 4, 2024, sought adjudication of one issue—whether San Diego Unified denied Student a free appropriate public education by failing to agree to fund an independent speech and language evaluation or file for due process to prove that its own evaluation was appropriate. Student sought an order requiring San Diego Unified to provide an independent evaluation in speech and language at public expense.

On April 5, 2024, San Diego Unified dismissed Issue 2, without prejudice, from its due process complaint, stating that Parent had signed the January 30, 2024, assessment plan on April 4, 2024, permitting San Diego to conduct a speech and language examination. On April 8, 2024, Student filed this motion to consolidate.

San Diego Unified opposes consolidation on the grounds that the only remaining issue in its complaint is whether its "psychoeducational" evaluation was appropriate. Having dismissed Issue 2, San Diego Unified argues that there is no longer a commonality of issues or facts, since Student's one issue addresses the speech and language evaluation—not the psychoeducational evaluation. Student responds by arguing that when Student filed his complaint, San Diego Unified's complaint did contain an issue addressing the speech and language assessment, and that it was only after Student filed the complaint on April 4, 2024, that San Diego Unified dismissed Issue 2. It should be noted that San Diego Unified only dismissed the issue without prejudice. Student further argues that when Parent consented to the assessment plan, she specifically noted she was not waiving her demand for an independent evaluation and a district representative confirmed that position by email. Finally, Student argues that the assessment in San Diego's Issue 1 was not strictly a "psychoeducational" evaluation, but a "multi-disciplinary" evaluation. As such, the failure to include a speech and language assessment in that evaluation gives rise to Parent's right to an independent evaluation in that area.

Although San Diego Unified dismissed its Issue 2, based upon the allegations in both complaints, a trier of fact will have to determine if San Diego Unified was required to include a proper speech and language assessment in its multi-disciplinary evaluation, and whether any alleged failure to do so gave rise to Parent's right to claim an independent evaluation at public expense in that area. Whether Parent also agreed to a

district evaluation is a fact that will go to the weight of the evidence. However, it is likely that the same witnesses and evaluators will be called to adjudicate both issues in both complaints. Finally, the fact that San Diego Unified dismissed Issue 2, referencing the speech and language assessment, without prejudice, suggests that this issue has not been fully laid to rest.

Accordingly, both cases do involve a common question of law or fact, as set forth above. In addition, consolidation furthers the interests of judicial economy because it is anticipated that similar witnesses and evidence will be used in both cases. Accordingly, consolidation is granted.

ORDER

1. Student's Motion to Consolidate is granted.
2. Student's Case is designated as the primary case. All dates previously set in District's Case, OAH case number 2024020608, are vacated.
3. 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 Primary Case, OAH case number 2024040252.

IT IS SO ORDERED.



Brian H. Krikorian
Administrative Law Judge
Office of Administrative Hearings