BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: YUCAIPA-CALIMESA JOINT UNIFIED SCHOOL DISTRICT, EAST VALLEY SELPA v. PARENT ON BEHALF OF STUDENT,	OAH CASE NO. 2014090352
PARENT ON BEHALF OF STUDENT v. YUCAIPA-CALIMESA JOINT UNIFIED SCHOOL DISTRICT, EAST VALLEY SELPA.	OAH CASE NO. 2014090973 ORDER FOLLOWING PRE-HEARING CONFERENCE, GRANTING MOTIONS TO AMEND AND CONSOLIDATE AND DISMISSING SAN BERNARDINO COUNTY DEPARTMENT OF BEHAVIORAL HEALTH

On September 29, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Sabrina Kong, Office of Administrative Hearings (OAH). Vivian Billups, Attorney at Law, appeared on District's and SELPA's behalf. Steven Figueroa, non-attorney advocate, appeared on Student's behalf. The PHC was recorded.

District filed its due process complaint on September 8, 2014. Student filed its due process complaint on September 19, 2014. Student filed a Motion for Consolidation on September 22, 2014 requesting that OAH consolidate both cases. Implicit in Student's request to consolidate its case with District's is a request to continue District's case. District filed its Motion to Amend the due process complaint on September 26, 2014 requesting that SELPA be added as a party, and the determination of whether FAPE was offered to Student. At the prehearing conference, the ALJ ruled on Student's Motion for Consolidation and District's Motion to Amend after giving the parties an opportunity to be heard on both motions.

District's Motion to Amend

In its first amended due process complaint, District added an issue that placement and services offered to Student was FAPE in the same time period as set forth in its due process complaint, and added SELPA as party. Both additions were also in Student's due process

complaint. Student had until September 30, 2014 to file an opposition to District's Motion to Amend, but waived his right to do so at the PHC stating that he did not oppose the Motion to Amend.

An amended complaint may be filed when either (a) the other party consents in writing and is given the opportunity to resolve the complaint through a resolution session, or (b) the hearing officer grants permission, provided the hearing officer may grant such permission at any time more than five (5) days prior to the due process hearing. (20 U.S.C. §1415(c)(2)(E)(i).) The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. §1415(c)(2)(E)(ii).)

The motion to amend is timely, and is granted because the addendum will result in a more efficient hearing of related issues with all relevant parties. The first amended complaint shall be deemed filed on the date of this order and all timelines are reset as of the date of this order. Because granting the motion to amend resets all hearing timelines, and no resolution session is required in a District-filed case, any reset hearing date would be scheduled prior to the dates currently set for Student's case and must be continued. The hearing schedule for District's amended complaint is discussed below.

Motion for Consolidation and to Continue District's Case

District filed its opposition to the Motion for Consolidation on September 30, 2014 on the ground that the San Bernardino Department of Behavioral Health was an improper additional party to Student's due process complaint. Student agreed to dismiss the San Bernardino Department of Behavioral Health on Ms. Billups' representation that the SELPA, and not the San Bernardino Department of Behavioral Health, was responsible for the provision of the mental health assessments and services alleged by Student. Based on Student's dismissal of the San Bernardino Department of Behavioral Health, the Motion for Consolidation was deemed unopposed.

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].)

Here, the both cases involve a common question of law or fact, specifically, the appropriateness of Student's placement and services, and special education assessments. Accordingly, consolidation is granted. All dates in the District's case, OAH Case Number 2014090352, which would be reset as of today due to the amendment, will be continued to the same dates as set forth in OAH's September 29, 2014 scheduling order in the Student's case, OAH Case Number 2014090973. The mediation will be held on October 23, 2014 at 9:30 a.m., at District's office located at 35912 Avenue H, Yucaipa, CA 92399. The

telephonic prehearing conference will be held on November 3, 2014 at 1:00 p.m. The due process hearing will be November 13, 17, 18 and 19, 2014, starting at 9:30 a.m. the first day, and 9:00 a.m. thereafter and continuing day to day, Monday through Thursday, as needed at the discretion of the ALJ. 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 2014090352, the District's Case. The primary case shall be the District's case, and the parties shall use the consolidated caption for all filings after this date.

Dismissal of San Bernardino Department of Behavioral Health

Based on Student's oral dismissal of San Bernardino Department of Behavioral Health, that entity is dismissed as a party from this matter.

IT IS SO ORDERED.

DATE: September 29, 2014

/s/

SABRINA KONG
Administrative Law Judge
Office of Administrative Hearings