BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. GILROY UNIFIED SCHOOL DISTRICT;	OAH Case No. 2019011070
GILROY UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2019030512 ORDER GRANTING MOTION TO CONSOLIDATE

On January 28, 2019, Student filed with the Office of Administrative Hearings a Request for Due Process Hearing in OAH case number 2019011070 (Student's Case), naming the Gilroy Unified School District.

On March 12, 2019, Gilroy filed a Request for Due Process Hearing in OAH case number 2019030512 District's Case), naming Student.

On March 12, 2019, Gilroy also filed a Motion to Consolidate District's Case with Student's Case. On March 15, 2019, Student filed an Opposition to the motion.

Consolidation

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, Student's Case and District's Case involve a common question of law or fact, specifically, whether Gilroy's offer of February 1, 2019, to place Student in a District-operated special day class as a transitional kindergartener, with mainstreaming with typical

peers constitutes the offer of a free appropriate public education in the least restrictive environment (as Gilroy asserts); or, whether continued placement in Student's County-operated preschool placement with 15 additional hours of mainstreaming is required to provide him a FAPE in the least restrictive environment (as Parents assert).

Student does not deny that the issues overlap as set forth above. He argues that his case is narrow, the District's case is broader, and the addition of several issues in the District case will therefore prolong and complicate the case, but that is always a consequence of consolidation. The only prejudice from consolidation that Student can identify is that there are only 57 days left in the school year left for him to get a favorable decision. However, the normal process of hearing, briefing and decision will consume all, or nearly all, of that time even if the hearing began on the schedule Student prefers. In addition, an order favorable to Student would routinely include a period of time for the District to come into compliance with its terms. It is therefore unrealistic to expect that Student would enjoy a favorable decision and significant new mainstreaming opportunities before the end of the school year whether the cases are consolidated or not. The delay that consolidation will cause is two weeks.

Consolidation furthers the interests of judicial economy because many of the same witnesses will testify and many of the same documents will be introduced in both cases. In addition, consolidation will conserve the resources of both parties and OAH and avoid the possibility of inconsistent judgments. Accordingly, consolidation is GRANTED.

ORDER

1. Gilroy's Motion to Consolidate is granted.
2. All dates previously set in OAH Case Number 2019011070 [Student's Case] are vacated including the continued prehearing conference on Monday, March 18, 2019. That PHC is also vacated.
3. District's case is designated the primary case. 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 2019030512 (District's Case). The consolidated cases will proceed on the timeline set forth in OAH's scheduling order issued on March 13, 2019, in Case No. 2019030512 (District's Case).

IT IS SO ORDERED.

DATE: March 18, 2019

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Charles Marson
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CHARLES MARSON
Administrative Law Judge
Office of Administrative Hearings