BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS ON BEHALF OF STUDENT, v. PAJARO VALLEY UNIFIED SCHOOL DISTRICT.	OAH Case. 2015040414 ORDER DENYING MOTION TO CONSOLIDATE

On March 6, 2015, Pajaro Valley Unified School District filed a Request for Due Process Hearing in Office of Administrative Hearings case number 2015030424 (First Case), naming Parents on behalf of Student. Hearing in this case is currently set to begin on April 22, 2015.

On April 10, 2015, Student filed a Request for Due Process Hearing in OAH case number 2015040414 (Second Case), naming Pajaro Valley. This case is currently set for hearing on June 4, 2015.

On April 10, 2015, Student filed a Motion to Consolidate the First Case with the Second Case and to continue the due process hearing date set in the First Case such that both cases would be heard on the dates currently scheduled in the Second Case..

On April 13, 2015, Pajaro Valley filed an Opposition to Consolidation on the grounds that the two cases do not involve common questions of law and fact, or have the same timelines, and that consolidation would not further the interests of judicial economy by saving time or preventing inconsistent rulings. Further, Pajaro Valley argues that consolidation, and the requested continuance of the hearing dates, would be prejudicial, as one of its key witnesses would not be available for hearing after April 2015 because she would be on maternity leave, a fact known to Student as it was one of the basis for scheduling the dates currently on calendar in the First Case.

On April 14, 2015, Student filed a reply to Pajaro Valley's opposition to consolidation contending that consolidating the cases would not prejudice either party.

APPLICABLE LAW

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].)

Continuance

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances are disfavored. OAH considers all relevant facts and circumstances, including the proximity of the hearing date; previous continuances or delays; the length of continuance requested; the availability of other means to address the problem giving rise to the request; prejudice to a party or witness as a result of a continuance; the impact of granting a continuance on other pending hearings; whether trial counsel is engaged in another trial; whether the parties have stipulated to a continuance; whether the interests of justice are served by the continuance; and any other relevant fact or circumstance. (See Cal. Rules of Court, rule 3.1332(d).)

DISCUSSION

Regarding consolidation, the First Case filed by Pajaro Valley contains five issues relating to the question of whether various assessments of Student, conducted by Pajaro Valley, between October 2014 and November 2014 met all legal requirements. The Second Case, bought by Student, alleges two issues: 1) failure to provide Student with appropriate academic supports during the 2013-2014 and 2014-2015 school years; and 2) failure to provide Student with appropriate speech services "during the statutory period".

A reading of the issues presented in the two cases does not lead to the conclusion that the two cases present same or overlapping issues, or common questions of law or fact. In fact, the opposite appears true. The issues presented in the First Case are limited to a review of Pajaro Valley's 2014 triennial assessment of Student, while the Second Case is focused on

alleged deficiencies in Student's educational programs and services mainly in the 2013-2014 school year, and arguably during the 2014-2015 school year.[1]

Here, it is not established that consolidating the cases would further the interest of judicial economy. While it could be argued that both cases would involve the same parties, or same or similar witnesses, the issues in the cases are not the same, and the evidence in each case would be dissimilar, if not utterly different. Therefore, because the two cases are different, and the Second Case is more expansive in evidentiary scope than the First Case, the Second Case is likely to require more days of hearing than the three days currently set in the First Case. It would not serve the interests of the parties to delay and lengthen the timeline for the First Case.

Accordingly, Student's to consolidate the two cases is denied.

Lastly, regarding Student's request for continuance, because consolidation is denied Student's request for continuance based on the request for consolidation is also denied.

ORDERS

1. Student's motion to consolidate is denied.
2. Student's request for continuance is denied.
3. All dates will remain on calendar in both matters as previously set.

DATE: April 14, 2015

/s/
ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings

[1] While the Second Case provided ample supporting facts regarding the alleged violations during the 2013-2014 school year, it contains limited facts in support of the alleged violations during the 2014-2015 school year.