BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

MT. DIABLO UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT,

OAH CASE NUMBER 2021050501

ORDER DENYING MOTION TO CONSOLIDATE

MAY 21, 2021

On March 22, 2021, Parent on behalf of Student filed a due process hearing request with the Office of Administrative Hearings, referred to as OAH, naming Mount Diablo Unified School District as respondent, in OAH case number 2021030757. The hearing begins May 25, 2021.

On May 18, 2021, Mount Diablo filed a request for due process hearing naming Student as respondent, in OAH case number 2021050501. OAH set the hearing for June 9, 2021.

On May 18, 2021, Mount Diablo filed a motion to consolidate Student's case with Mount Diablo's case because both cases involve some of the same facts and witnesses, and consolidation would promote judicial economy. Additionally, Mount Diablo

requested that Student's hearing dates remain on calendar for both Student's case and Mount Diablo's case.

On May 20, 2021, Student opposed the motion for consolidation arguing no good cause was established to file an untimely motion, and the issues do not involve a common question of law or fact. Additionally, should OAH grant consolidation, Student argued prejudice because of the shortened time to prepare for Mount Diablo's issues, with less than one week to prepare, and requested a continuance.

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 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, Student's case and Mount Diablo's case do not involve a common question of law or fact. Specifically, Student alleged Individuals with Disabilities Education Act violations from 2016 through March 22, 2021, including a failure to assess; failure to offer appropriate goals, supports, services, and placement; failure to conduct an appropriate triennial assessment; and predetermination. Mount Diablo requested an order allowing it to assess Student pursuant to the April 29, 2021 assessment plan, without parental consent. It also requested an order to permit it to contact Student's school and observe Student.

Both of Mount Diablo's issues involved facts that occurred during a different timeframe and after Student's complaint was filed. Further, the parties seek different remedies that do not conflict with each other. And, the relevant law related to a school district's ability to assess a student without parental consent does not overlap with the relevant law related to Student's issues. Thus, the cases do not have fact or law commonality.

Additionally, Mount Diablo argued that consolidation promotes judicial economy because the same expert will be used in both cases to discuss a particular type of testing. It is common, however, for experts to testify in multiple cases about same or similar subjects related to their expertise. Thus, this argument is unpersuasive.

Accordingly, Mount Diablo's motion to consolidate is denied.

IT IS SO ORDERED.

Cynthia Fritz

Cynthia Fritz
Administrative Law Judge
Office of Administrative Hearings