

SAMPLE CONSOLIDATION ORDER

PARENT NAME, on behalf of
STUDENT,¹

Petitioner,

Case No. _____

vs.

_____, Hearing Officer

LEA,²

Respondent.

ORDER

Petitioner is the parent of Jane Doe (“Student”), a fourteen-year-old student with a disability who attends a Public High School. On August 15, 2013, Petitioner filed a due process complaint (“Complaint 1”) against School District (“District”) pursuant to the Individuals with Disabilities Education Act (“IDEA”).

On September 16, 17, and 19, 2014, this Hearing Officer held prehearing conferences in which Attorney 1, counsel for Petitioner, and Attorney 2, counsel for Respondent, participated. On September 24, 2014, this Hearing Officer issued a Prehearing Conference Summary and Order (“Prehearing Order”). In the Prehearing Order, this Hearing Officer certified the following issues for adjudication at the due process hearing:

A. Whether Respondent denied the Student a free, appropriate, public education (“FAPE”) by reducing the hours of specialized instruction from the Student’s June 10, 2013, IEP from 26.5 hours outside the general education

¹ Include the student’s name if the student is a minor. For an adult student, simply list the name of the student.

² Hearing Officers should identify the LEA that was party to the particular case.

setting, as provided in her 2012 IEP, to six hours in an inclusion setting without the participation or input of Petitioner;

B. Whether Respondent denied the Student a FAPE by changing her mode of transportation to school from a school bus to public transportation;

C. Whether Respondent denied the Student a FAPE by failing to provide her extended school year services (“ESY”) during the 2013 summer.

During the prehearing conferences, counsel for Petitioner informed this Hearing Officer that she planned to file a second complaint on behalf of the Student and would seek consolidation of the two complaints. On September 30, 2013, Petitioner filed a second complaint (“Complaint 2”) against District and, pursuant to section 200.5(j)(3)(ii)(a)(1), this Hearing Officer was appointed to the matter.

In Complaint 2, Petitioner alleges that District denied the Student a FAPE by failing to provide Petitioner access to her educational records and by failing to comprehensively evaluate the Student in all areas of suspected disability.

On September 30, 2013, Petitioner filed a *Motion to Consolidate*, which requested that this Hearing Officer consolidate Complaint 1 and Complaint 2. Petitioner asserted that both cases would require the same witnesses.

On October 2, 2013, Respondent filed an Opposition to Petitioner’s Motion to Consolidate (“Opposition”). In its Opposition, District argues that a consolidation of the two complaints would violate IDEA because “nothing in the IDEA statute permit[s] or provid[es] for consolidation or any other such motion to the hearing officer.” Respondent asserts that, for Complaint 2, consolidation would shorten the 75-day timeline applicable to due process complaints.

Respondent asserts that, although the section 200.5(j)(3)(ii)(a) of the Regulations of the Commissioner provide for consolidation of complaints, the § 200.5(j)(3)(ii)(a) “contradicts IDEA’s plain language for amendment and concurrent complaints.”

This Hearing Officer finds Respondent’s arguments unpersuasive. Consolidation of Complaint 1 and Complaint 2 would not prevent the parties from holding a resolution session as the resolution session for Complaint 2 is scheduled for October 4, 2013. Additionally, this Hearing Officer has scheduled a prehearing conference on Complaint 2 for October 7, 2013. Thus, although consolidation may truncate the seventy-five-day timeline for Complaint 2, it would not prevent the parties from participating in the required resolution session and prehearing conference.

Additionally, the IDEA regulations do not prohibit states from implementing their own procedural rules. Rather, several sections of IDEA specifically allow states to set IDEA policy, including the statute of limitations.³ In fact, States have considerable latitude in determining appropriate procedural rules for due process hearings as long as they are not inconsistent with the basic elements of due process hearings and rights of the parties set out in the statute and the regulations.⁴ Moreover, it is further expected that the hearing officer “ensure that the due process hearing serves as an effective mechanism for resolving disputes between parents” and the school district.⁵ In this regard, apart

³ See, e.g., 34 C.F.R. § 300.502 (a)(2).

⁴ *Analysis and Comments to the Regulations*, Federal Register, Vol. 71, No. 156, Pages 46704, 46706 (August 14, 2006).

⁵ *Letter to Anonymous*, 23 IDELR 1073 (OSEP 1995).

from the hearing rights set forth in IDEA and the regulations, “decisions regarding the conduct of [IDEA] due process hearings are left to the discretion of the hearing officer,” subject to appellate review.⁶

Section 200.5(j)(3)(ii)(a) permits this Hearing Officer to consolidate one or more separate requests for due process involving common questions of law and fact, provided the factors included under section 200.5(j)(3)(ii)(a)(4) are considered. The relevant factors include, but are not limited to:

- (1) the potential negative effects on the child’s educational interests or well-being which may result from the consolidation;
- (2) any adverse financial or other detrimental consequence which may result from the consolidation of the due process complaints; and
- (3) whether consolidation would (i) impede a party’s right to participate in the resolution process; (ii) prevent a party from receiving a reasonable opportunity to present its case; or prevent the impartial hearing officer from timely rendering a decision.⁷

Pursuant to section 200.5(j)(3)(ii)(a), this Hearing Officer finds that Complaint 1 and Complaint 2 involve common questions of law and fact. Specifically, issue A in Complaint 1, i.e., whether the Student’s IEP is appropriate, and the second issue in Complaint 2, i.e., whether DCPS failed to evaluate the

⁶ *Id.*

⁷ *See* 8 NYCRR § 200.5(j)(3)(ii)(a)(4)(i) – (iii).

Student in all areas of suspected disability, may involve common questions of fact. Additionally, both hearings will require the same witnesses and some of the same documents.

This Hearing Officer further finds that there is no potential negative effect on Student's educational interests or well-being that would result from the consolidation. On the contrary, it would not serve Student's educational interests, and perhaps well-being, to delay any decision on the appropriateness of the recent IEP. This Hearing Officer also finds that consolidation of the complaints would not adversely impact the parties financially or result in other detrimental consequences. As indicated above, it is expected that both hearings will require the same witnesses and some of the same documents.

Moreover, consolidating the two complaints will not impact District's right to participate in a resolution meeting (as it is scheduled already for October 4, 2013, which is prior to the disclosure deadline and hearing dates for Complaint 1) or prevent either party from receiving a reasonable opportunity to present its case (as the hearing is scheduled for October 17 and 18, 2013, with a reserve date of October 21, 2013, and disclosures would be due after the resolution meeting of October 4, 2013) or prevent this Hearing Officer from timely rendering a decision. The decision will be rendered and mailed to the parties on or before October 29, 2013.

Thus, for the convenience of the parties (and, specifically, Student) and in the interest of judicial efficiency, this Hearing Officer will consolidate Complaint 1 and Complaint 2. The consolidated complaints will hereby move forward under Case No. _____ and all future correspondence, pleadings and motions must reference the correct case number.

IT IS SO ORDERED.

DATED: October 3, 2013

HEARING OFFICER

Copies to:

Attorney 1, counsel for Petitioner
Attorney 2, counsel for Respondent