BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

# IN THE CONSOLIDATED MATTERS INVOLVING:

# PARENT ON BEHALF OF STUDENT,

# V.

# MT. DIABLO UNIFIED SCHOOL DISTRICT,

# OAH CASE NUMBER 2023010234

# OAH CASE NUMBER 2022120477

# ORDER FOLLOWING PREHEARING CONFERENCE GRANTING REQUEST FOR CONSOLIDATION AND CONTINUANCE

January 17, 2023

On December 14, 2022, Mt. Diablo Unified School District filed with the Office of Administrative Hearings a Request for Due Process Hearing in OAH case number 2022120477,Mt. Diablo's Case, naming Student.

On January 10, 2023, Student filed a Request for Due Process Hearing in OAH case number 2023010234, Student's Case, naming Mt. Diablo.

On January 10, 2023, Student filed a Motion to Consolidate the cases. Student subsequently filed two additional motions to consolidate including accompanying requests for continuance or partial continuance of the consolidated cases.

On January 12, 2023, Mt. Diablo filed its own motion to consolidate and continue the consolidated cases. On January 13, 2023, Mt. Diablo filed to request withdrawal of its prior motion. Shortly thereafter, Mt. Diablo filed a motion to continue its case and opposing the consolidation of the two cases.

On January 13, 2023, Administrative Law Judge Ted Mann, Office of Administrative Hearings held a telephonic prehearing conference. The Administrative Law Judge will be referred to as an ALJ. The prehearing conference will be referred to as a PHC.

Parent, Attorney at Law, appeared on behalf of Student. Christine Huntoon, Attorney at Law, appeared on behalf of Mt. Diablo Unified School District. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

## 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 and/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, both cases involve a common question of law or fact, specifically, student's feeding plan and the accompanying assessment and consideration of same through the individualized educational plan process. In addition, consolidation strongly furthers the interests of judicial economy because over the overlapping witnesses and exhibits related to the issues. Accordingly, consolidation is granted.

## HEARING DATES, TIMES, AND LOCATION

Following extensive discussion at the PHC, and in consideration of the consolidation of the two cases, the parties jointly moved to continue the prehearing conference and due process hearing based on Mt. Diablo's unavailability on the hearing dates initially scheduled for Student's case.

The motion was not filed three days before the PHC. Moving parties established good cause for filing the motion less than three days before this PHC.

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. Good cause may include the unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances; substitution of an attorney when the substitution is required in the interests of justice; a party's excused inability to obtain essential testimony or other material evidence despite diligent efforts; or another significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. (Ed. Code, § 56505, subd. (f)(3); Cal. Rules of Court, rule 3.1332(c).) 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 or imposing conditions on the continuance; and any other relevant fact or circumstance. (Cal. Rules of Court, rule 3.1332(d).)

The request for continuance is granted for good cause. This is the first request for continuance in the Student's case, and Mt. Diablo is demonstrably unavailable for the initial hearing dates set for Student's case. As such, all previously scheduled dates are vacated. The case shall proceed as follows:

PHC will be held on Monday, March 13, 2023, at time 1:00 PM.

All other prehearing matters shall be addressed at the March 13, 2023 PHC. All prehearing motions must be filed three business days before the PHC.

Due Process Hearing: March 21, 2023 through March 23, 2023.

The hearing will be conducted via telephone or videoconference and shall begin at 9:30 AM and end at 3:30 PM on all days, unless otherwise ordered. The hearing shall continue day to day at the discretion of the ALJ.

The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure that the witnesses will be available to testify. A witness will not be regarded as unavailable for purposes of showing "good cause" to continue the hearing if the witness is not properly notified of the hearing date or properly subpoenaed.

## SETTLEMENT

The parties shall immediately inform OAH in writing if they reach a settlement or otherwise resolve the dispute before the scheduled hearing. If the parties reach a settlement within five days of the scheduled start of the due process hearing, the parties shall also inform OAH of the settlement by telephone at (916) 263-0880.

If a full and final written settlement agreement is reached after 5:00 PM the day before the hearing, the parties shall leave a voicemail message regarding the settlement at (916) 274-6035. The parties should also leave contact information such as cellular phone numbers of each party or counsel for each party. At the same time, the parties should send the signature page of the signed agreement or a letter withdrawing the case to OAH at https://www.applications.dgs.ca.gov/oah/oahsftweb.

Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received by OAH. If an agreement in principle is reached, the parties should plan to attend the scheduled hearing unless different arrangements have been agreed upon by the assigned ALJ. The assigned ALJ will check for messages before the hearing.

If the matter settles subject to board approval, in addition to a signed copy of the signature page of the settlement agreement, the parties shall provide the date of the next board meeting. The hearing dates will not be cancelled without this information.

## FAILURE TO COMPLY

Failure to comply with this order may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

*Ted Mann*

Ted Mann

Administrative Law Judge

Office of Administrative Hearings