BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:

PARENT ON BEHALF OF STUDENT,

and

TRAVIS UNIFIED SCHOOL DISTRICT,

OAH CASE NUMBER 2022120744

OAH CASE NUMBER 2022070352

ORDER FOLLOWING PREHEARING CONFERENCE GRANTING STUDENT'S MOTION TO AMEND AND GRANTING REQUEST FOR CONTINUANCE

FEBRUARY 27, 2023

On February 24, 2023, Administrative Law Judge Judith Pasewark, 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. Tania Whiteleather, Attorney at Law, appeared on behalf of Student. Jan Tomsky, Attorney at Law, appeared on behalf of Travis Unified School District. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

MOTIONS

On July 12, 2022, Travis Unified filed its request for due process hearing, called a complaint. On August 30, 2022, OAH granted Travis Unified's motion to amend its complaint. On December 14, 2022, OAH granted Travis Unified's second request to amend its complaint.

On December 27, 2022, Student filed a request for due process hearing, along with a motion to consolidate Student's complaint with Travis Unified's second amended complaint.

As part of the prehearing conference held on December 30, 2022, OAH granted Student's request to consolidate the two matters. In order to avoid further delays in the hearing, OAH continued the hearing to dates certain for both parties, with the caveat that no further amendments or continuances would be granted without a written declaration demonstrating good cause.

On February 10, 2023, Student filed a motion to amend Student's complaint, requesting to add additional issues, which were omitted in Student's original complaint filed on December 27, 2022. On February 15, 2023, Travis Unified filed an opposition to Student's motion to amend, citing Student failed to file a written declaration, and citing the January 4, 2023 Order Following Prehearing Conference which indicated OAH would grant no further amendments or continuances without good cause.

On February 16, 2023, Student filed a reply which included the omitted declaration. Student alleged the information which formed the new issues was not previously available as Travis Unified did not timely respond to Student's request for production of documents. Further, On February 24, 2023, Student filed a request to

allow more time for expert observations, claiming difficulties in coordinating observation times with Travis Unified's personnel.

During the PHC, Student's counsel explained that an immediate family had an acute medical issue which required hospitalization, and further required counsel to provide significant post-release care.

MOTION TO AMEND STUDENT'S COMPLAINT

The Individuals with Disabilities Education Act allows a party to file an amended complaint so long as the amendment is made more than five calendar days prior to the commencement of the due process hearing, and the hearing officer grants permission. (20 U.S.C. § 1415(c)(2)(E)(i); 34 C.F.R. § 300.11.)

Student filed the motion to amend on February 10, 2023, well in advance of the hearing date of March 7, 2023. The January 4, 2023 Order Following Prehearing Conference advised the parties that no further amendments or continuances would be granted without good cause. In this matter, Student established good cause for a continuance based upon a family medical issue.

In conjunction with the unforeseen need for continuance, Student's request to amend is granted as a matter of equity. This is Student's first request for continuance. OAH granted Travis Unified a second amended complaint. Student's amended issues relate to the issues already part of the consolidated complaints and do not require significant trial preparation to be addressed at hearing. There is a cross-over of relevant witnesses and testimony common to both cases which will serve judicial economy. Further, amending the complaint will not extend the date for hearing beyond the continuance dates granted in this order.

Student's amended complaint is deemed filed on the date of this Order. All dates are vacated. OAH will issue a scheduling order with the new dates. The 45-day timeline for issuing the decision in these consolidated cases will be reset based on the filing date of Student's amended complaint. The scheduling order shall indicate the continuance dates below as the new dates for due process hearing and prehearing conference. Based upon Travis Unified's request for the earliest hearing dates available to both parties, resolution session is waived.

MOTION TO CONTINUE

The ALJ on her own motion, based upon confidential medical information establishing good, granted a continuance of the consolidated due process hearing on this matter.

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. All previously scheduled dates are vacated. The consolidated cases shall proceed as follows:

HEARING DATES, TIMES AND LOCATION

The prehearing conference will be held on March 10, 2023, at 10:00 AM.

All other prehearing matters shall be addressed at the March 10, 2023, prehearing conference. All prehearing motions must be filed three business days before the PHC.

The Due Process Hearing will be held on March 21. 22, and 23, 2023. The ALJ is advised of counsel's preexisting federal court appearing scheduled for the morning of 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. Failure to complete expert observations will not be considered

good cause for further delay in the hearing. The parties shall cooperate in completing Student's expert observations

ADDITIONAL ORDERS

The Scheduling Order for Student's first amended complaint shall include the continuance dates contained in this order. Further, the dates for due process hearing in this order are deemed the first continuance of Student's amended complaint.

No further motions to amend shall be accepted from either party.

No further continuances shall be granted without a declaration providing good cause which demonstrates a necessity for continuance.

Neither party shall set another matter with OAH on the dates scheduled for hearing in this matter. The consolidated matters in this case OAH Case No. 2022120744 and OAH Case No. 2022070352 shall take priority any OAH filed after July 12, 2022, the initial filing date in this case.

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.

ORDER INCLUDES ALL RULINGS

This Order includes all rulings made at the prehearing conference. Any discussion and conversation not referenced in this Order is not binding on the ALJ conducting the hearing and may not be relied upon by the parties. The parties should

be aware that, at hearing, the ALJ conducting the hearing has discretion to reconsider any part of this Order.

IT IS SO ORDERED.

Judith Pasewark

Judith Pasewark

Administrative Law Judge

Office of Administrative Hearings