BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:

PARENT ON BEHALF OF STUDENT,

and

RIVERSIDE UNIFIED SCHOOL DISTRICT,

OAH CASE NUMBER 2023090117

OAH CASE NUMBER 2024010703

ORDER FOLLOWING PREHEARING CONFERENCE GRANTING REQUEST FOR CONTINUANCE AND LEAVE TO FILE A MOTION FOR RECONSIDERATION

MARCH 25, 2024

On March 25, 2024, Administrative Law Judge Tiffany Gilmartin, Office of Administrative Hearings, held a prehearing conference by videoconference. The Administrative Law Judge is called an ALJ. The Office of Administrative Hearings is called OAH. The prehearing conference is called a PHC.

Attorney Tania Whiteleather appeared on behalf of Student. Attorney Jack Clarke appeared on behalf of Riverside Unified School District. Paralegal for Riverside Jaquelyn

Arredondo was also present. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

RIVERSIDE'S MOTION TO CONSOLIDATE

On March 20, 2024, Riverside filed a motion to consolidate the already consolidated cases of Student's case 2023090117 and District's case 2024010703, with a newly filed Student case, 2024020782, filed on February 21, 2024. Student did not request to amend the original complaint; thus, the matter was deemed a new filing by OAH.

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].)

Riverside's motion to consolidate is denied. Consolidating two cases filed by Student with potentially overlapping but new issues with a third case filed by Riverside does not serve judicial economy. Nothing prevents Student, however, from filing a Motion to Amend and a proposed single amended complaint that includes all issues Student intends to litigate. Given the length these matters have been pending, any such motion should be expeditiously filed.

Riverside requested a brief continuance of the prehearing conference and leave to file a motion for reconsideration. Student also requested an opportunity to file a response to Riverside's motion. Riverside's request was granted. Riverside will file its

motion for reconsideration by close of business, Tuesday, March 26, 2024. Student will file any response to Riverside's motion for reconsideration by close of business on Wednesday, March 27, 2024. Any additional motions contemplated by Student or Riverside must be filed no later than close of business on March 28, 2024.

HEARING DATES, TIMES, AND LOCATION

The parties jointly moved to continue the prehearing conference and due process hearing based on Riverside's request for reconsideration. The parties established good cause as there is a question of law both parties had an interest in doing further research and providing a written response and the amount of time requested was very brief.

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 case shall proceed as follows:

PREHEARING CONFERENCE will be held on March 29, 2024, at 3:00 PM.

All other prehearing matters shall be addressed at the March 29, 2024, prehearing conference. All prehearing motions must be filed three business days before the PHC.

Due Process Hearing: April 9, 10, and 11, 2024.

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.

Tiffany Gilmartin

Tiffany Gilmartin

Administrative Law Judge

Office of Administrative Hearings