BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:

RIVERSIDE UNIFIED SCHOOL DISTRICT,

and

PARENT ON BEHALF OF STUDENT.

OAH CASE NUMBER 2023030101

OAH CASE NUMBER 2023010521

ORDER FOLLOWING PREHEARING CONFERENCE GRANTING MOTION TO CONSOLIDATE AND DENYING MOTION TO CONTINUE

MARCH 7, 2023

On March 6, 2023, Administrative Law Judge Jennifer Kelly, 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.

Terri Palmquist, Attorney at Law, appeared on behalf of Student. Jack B. Clarke, Attorney at Law, appeared on behalf of Riverside Unified School District, referred to as

Riverside. Paralegal Dalicia Edwards also appeared for Riverside. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

HEARING DATES, TIMES, AND LOCATION

CONSOLIDATION AND CONTINUANCE

On January 20, 2023, Parents on behalf of Student filed with OAH a Request for Due Process Hearing in OAH case number 2023010521, Student's Case, naming Riverside.

On March 1, 2023, Riverside filed a Request for Due Process Hearing in OAH case number 2023030101, Riverside's Case, naming Student. On March 1, 2023, Riverside filed a Motion to Consolidate the cases and to continue the due process hearing dates set in Student's Case, OAH case number 2023010521, to the dates set in Riverside's Case.

On March 3, 2023, Student filed an objection to consolidation on the grounds Riverside did not timely file its due process hearing request after learning of Parent's objection to Riverside's assessments and failed to timely file a response to Student's due process hearing request. Student further argued at the PHC that Riverside's complaint and Student's complaint did not contain common issues of fact and law. Specifically, Student argued that only the appropriateness of Riverside's speech and language assessment is at issue and that Riverside agreed to an independent psychoeducational evaluation. Riverside argued that it also seeks a determination that its May 7, 2022 occupational therapy and February 23, 2022 physical therapy assessments were legally compliant.

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, the appropriateness of Riverside's April 6, 2022 academic assessment and May 11, 2022 speech and language assessment. Student's complaint further alleges Riverside failed to timely file a due process hearing request to defend the appropriateness of its assessments, and to conduct assessments in occupational therapy, augmentative and alternative communication, health, physical therapy, adapted physical education, central auditory processing, special circumstances instructional assistance, and functional behavior. Student claims Parents are entitled to independent educational evaluations at public expense or compensatory education in these areas. Furthermore, Student contends the November 16, 2020, November 12, 2021, and May 12, 2022 individualized education programs, referred to as IEPs, did not offer Student a free appropriate public education. A free appropriate public education is referred to as a FAPE.

Riverside's complaint seeks to defend the appropriateness of its May 15, 2022 multidisciplinary assessment, February 23, 2022 physical therapy assessment, April 6, 2022 preschool to kindergarten transition assessment, May 7, 2022 occupational therapy assessment, and May 11, 2022 speech and language assessment. Riverside seeks an order that Student is not entitled to publicly funded independent educational evaluations in these areas.

Student's Case and Riverside's Case involve common questions of law or fact, specifically whether an equitable remedy in both matters includes Riverside funding independent educational evaluations at public expense. Therefore, consolidation is warranted. In addition, consolidation furthers the interests of judicial economy because both cases involve the same parties and many of the same witnesses will be required to testify in each proceeding. Each matter will also involve the introduction of many of the same documents. Accordingly, consolidation is granted.

When consolidating cases, OAH designates the statutory timelines applicable to the consolidated matters to be controlled by one of the cases. Here, Riverside's Case, OAH number 2023030101 will control the statutory timeline, and is considered the primary case. Because the due process hearing in the consolidated matters will proceed on the dates set in the primary case, Riverside's motion to continue is moot.

The parties stipulated on the record at the PHC that Riverside shall inform Student by 5:00 PM on March 14, 2023, as to which proposed witnesses are Riverside's employees. Riverside shall also identify the witnesses on Student's list that require a subpoena. Riverside may agree to accept service for a witness under its control or provide Student with the witness's most recent contact information.

All other prehearing matters shall be addressed at the PHC scheduled for March 20, 2023, at 1:00 PM. PHC statements and prehearing motions must be filed three business days before the PHC. Any motion that was not filed three business days before the PHC, shall be supported by a declaration under penalty of perjury establishing good cause why the motion was not timely filed.

SETTLEMENT

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 PHC. 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.

ORDER

1. Riverside's Motion to Consolidate is granted.
2. Riverside's Case is designated as the primary case. All dates previously set in Student's Case, OAH case number 2023010521, are vacated.

3. Riverside's Motion to Continue is denied as moot because Riverside's Case is designated as the primary case and the due process hearing will proceed on the dates set in Riverside's Case. The PHC in the consolidated cases shall be held on March 20, 2023, at 1:00 PM, and the Due Process Hearing in the consolidated cases shall be held on March 28, 29, and 30, 2023, beginning at 9:30 AM on all days, and continuing day to day as needed at the discretion of the ALJ.
4. The 45-day timeline for issuance of the decision in the consolidated cases shall be based on the date Riverside filed its complaint in OAH case number 2023030101.

IT IS SO ORDERED.

Jennifer Kelly

Jennifer Kelly
Administrative Law Judge
Office of Administrative Hearings