BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:

PARENT ON BEHALF OF STUDENT,

v.

GRANITE MOUNTAIN CHARTER SCHOOL,

OAH CASE NUMBER 2023010119

OAH CASE NUMBER 2022080567

ORDER FOLLOWING PREHEARING CONFERENCE AND GRANTING MOTIONS TO CONSOLIDATE AND TO CONTINUE DUE PROCESS HEARING

January 13, 2023

On January 13, 2023, Administrative Law Judge Alexa Hohensee, 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. Attorney Vivian Billups Randolph appeared on behalf of Granite Mountain Charter School. Parent appeared on behalf of Student. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

STUDENT'S MOTION TO CONSOLIDATE

On August 19, 2022, Granite Mountain filed with the Office of Administrative Hearings a request for due process hearing in OAH case number 2022080567, naming Student. A request for due process hearing is called a complaint.

On January 6, 2023, Parent on behalf of Student filed a complaint in OAH case number 2023010119, naming Granite Mountain.

On January 9, 2023, Student filed a motion to consolidate Student's case and Granite Mountain's case. At the PHC, Granite Mountain did not oppose 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].)

Granite Mountain asserts 14 claims, specifically that it did not deny Student a free appropriate public education, called a FAPE, because mandatory team members were present at the May 12, 2022 individualized education program, or IEP, team meeting. It also alleges that staff instructing Student in the 2021-2022 school year were qualified, goals were properly implemented, a behavior intervention plan was not necessary, and consultation services were implemented from June 2021 through June 2022. Granite Mountain alleges that no changes to goals were made after Parent consented to the September 22, 2021 IEP, and the IEP developed on September 22, 2021, November 18, 2021, January 17, 2022 and February 22, 2022 offered Student a FAPE. Granite

Mountain claims that excusal of participants from the June 10, 2022 IEP team meeting did not violate Parent's rights, Parent was given sufficient information to give informed consent to the June 10, 2022 IEP, and its response to Parent's records request before the June 10, 2022 IEP team meeting was timely. It also alleges that it reasonably scheduled IEP team meetings, appropriately conducted the June 2021 IEP team meeting, and appropriately conducted occupational therapy, speech and behavior assessments during the 2021-2022 school year. Lastly, Granite Mountain claims it was not required to contract with Parent's preferred occupational therapy or speech providers.

Student asserts six claims, specifically that Granite Mountain denied Student a FAPE by unreasonably delaying its response to Parent's request for independent educational evaluations, using unqualified service providers, failing to have necessary team members at IEP team meetings or improperly excusing others, prioritizing schedules and agenda items over Parent's input at IEP team meetings, drafted unclear IEP offers for services as needed at the provider's discretion, and unilaterally changing Student's annual goals.

Here, Granite Mountain's case and Student's case involve common questions of law or fact, particularly whether Granite Mountain appropriately conducted IEP team meetings, appropriately assessed Student, and offered Student a FAPE during the 2021-2022 school year. In addition, consolidation furthers the interests of judicial economy as the same witnesses and evidence will be presented in both cases, and consolidation will avoid the duplication of time, expense and resources involved in having these matters proceed to hearing separately and the possibility of conflicting decisions. Accordingly, consolidation is granted. Student's case is designated the primary case.

DISTRICT'S MOTION TO CONTINUE

At the PHC, Granite Mountain requested a continuance of the dates in Student's case because its counsel was scheduled to appear on those dates in another due process hearing for an earlier-filed OAH case. Student did not oppose the continuance, as Student desires additional time to retain counsel. The due process hearing in Student's case is scheduled to begin on February 22, 2023.

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).)

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. Good cause is established by the unavailability of Granite Mountain's counsel, and Parents' reasonable request for a short continuance to retain counsel to represent Student. The request is granted. In addition to the consolidated due process hearing, the parties offered dates for a resolution session, mediation, and prehearing conference. Accordingly, these consolidated matters will be set to mutually agreed dates as follows:

Resolution session will be held on January 19, 2023, from 1:00 PM to 4:00 PM. The resolution session will take place at Granite Mountain's administrative offices unless the parties agree to meet by videoconference. OAH is not involved in and has no control over the resolution session.

Mediation will take place on February 13, 2023, from 9:00 AM to 4:30 PM, and will be held by videoconference.

Prehearing Conference will be held on February 17, 2023, from 10:00 AM to 12:00 PM, and will be held by videoconference.

Due Process Hearing will be held on March 7, through 9, 2023, and will be held by videoconference. The consolidated hearing shall begin at 9:30 AM on all days and generally end at 3:30 PM, unless otherwise ordered. The hearing shall continue day to day, as needed at the discretion of the Administrative Law Judge.

The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses, if necessary, to ensure their availability to testify. Good cause for witness unavailability is not established by failing to properly notify or subpoena a witness. Prehearing conference statements and motions are due to OAH no

later than three business days before the PHC or with evidence of good cause why it was not possible to file the motion by that date.

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

1. Student's motion to consolidate is granted.
2. Student's case is designated as the primary case. All dates previously set in Granite Mountain's case, OAH case number 2022080567, are vacated.
3. The 45-day timeline for issuance of the decision in the consolidated cases shall be based on the date of the filing of the complaint in the primary case, Student's case, OAH case number 2023010119.
4. Granite Mountain's motion to continue the consolidated cases is granted, to the dates mutually agreed by the parties:
    a. Resolution Session : January 19, 2023, from 1:00 PM to 4:00 PM
    b. Mediation: February 13, 2023, from 9:00 AM to 4:30 PM
    c. Prehearing Conference: February 17, 2023, at 10:00 AM
    d. Due Process Hearing: March 7, through 9, 2023.

Alexa Hohensee

Alexa Hohensee
Administrative Law Judge
Office of Administrative Hearings