BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS OF:

PARENT ON BEHALF OF STUDENT,

and

TRAVIS UNIFIED SCHOOL DISTRICT,

OAH CASE NUMBER 2022120744

OAH CASE NUMBER 2022070352

ORDER FOLLOWING PREHEARING CONFERENCE GRANTING CONSOLIDATION AND CONTINUANCE OF PREHEARING CONFERENCE AND DUE PROCESS HEARING

JANUARY 4, 2023

On December 30, 2022, 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 Office of Administrative Hearings will be referred to as OAH. 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:

MOTION FOR CONSOLIDATION

On July 12, 222, Travis Unified School District filed with OAH a Request for Due Process Hearing in OAH Case Number 2022070352, Travis Unified School District's case, naming Student.

On December 27, 2022, Student filed a Request for Due Process Hearing in OAH Case Number 2022120744, Student's case, naming Travis Unified School District.

On December 27, 2022, Student filed a Motion to Consolidate the cases. Travis Unified School District did not file an objection to the consolidation of cases. In order to avoid further continuances of these matters, the ALJ continued the due process hearing date set in Student's case, OAH Case Number 2022120744, to dates available to both parties.

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, failure to appropriately assess, the request for independent educational evaluations, and placement. Travis Unified School District does not oppose the motion. In addition, consolidation furthers the interests of judicial economy because both cases will likely involve the same witnesses and documentary evidence. Accordingly, consolidation is granted. OAH issues the following order:

1. Student's Motion to Consolidate is granted.
2. Student's case is designated as the primary case. All dates previously set in Travis Unified School District's case, OAH Case Number 2022070352, 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 Student's case, OAH Case Number 2022120744.

CONTINUANCE

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. OAH considers all relevant facts and circumstances in determining whether good cause exists to grant an extension. (See Cal. Rules of Court, rule 3.1332(d).)

In order to avoid further continuances of these matters, the ALJ continued the due process hearing date set in Student's case, OAH Case Number 2022120744, to dates available to both parties.

HEARING DATES, TIMES, AND LOCATION

The parties are advised to meet and confer to select a mediation date and submit their request for mediation within 10 business days of this order. These consolidated matters will not be further continued to accommodate a cancelled mediation.

PHC will be held on February 24, 2023, at 3:00 PM.

All other prehearing matters shall be addressed at the February 24, 2023 PHC. All prehearing motions must be filed three business days before the PHC. The parties shall confirm at the PHC whether they require the hearing to go dark on March 7, 2023.

Due Process Hearing will be held on March 7, through 9, 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.

No further continuance or amended complaints shall be granted without a written declaration indicating good cause for further delaying the hearing.

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.

Judith Pasewark

Judith Pasewark
Administrative Law Judge
Office of Administrative Hearings