

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:
PARENT ON BEHALF OF STUDENT,

and

TEMECULA VALLEY UNIFIED SCHOOL DISTRICT,
OAH CASE NUMBER 2022010822
OAH CASE NUMBER 2022030826

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

MARCH 28, 2022

On March 28, 2022, Administrative Law Judge Christine Arden, Office of Administrative Hearings, called OAH, held a videoconference prehearing conference. The Administrative Law Judge will be referred to as an ALJ. The prehearing conference will be referred to as a PHC.

Terri Palmquist, Attorney at Law, appeared on behalf of Student. Jack B. Clarke and Annalissa Maitz, Attorneys at Law, appeared on behalf of Temecula Valley Unified

School District. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

On January 31, 2022, Student filed with OAH a Request for Due Process Hearing in OAH case number 2022010822, called Student's Case, naming Temecula Valley Unified School District.

On March 24, 2022, Temecula Valley Unified School District filed a Request for Due Process Hearing in OAH case number 2022030826, called District's Case, naming Student.

On March 24, 2022, Temecula Valley Unified School District filed a motion to consolidate the Student's Case with District's Case, and to continue the hearing in the consolidated matter to the hearing dates assigned in District's Case, which are April 19, 2022, through April 21, 2022.

Student did not file a response to the motion. However, Student objected on the record, stating that Student did not object to the consolidation of Student's Case with District's Case, but Student preferred the hearing not be continued. Student did not provide any reason why a two-week continuance of the hearing would prejudice Student.

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].)

Here, both cases involve the same parties and common questions of law and fact, specifically, both cases involve issues regarding Temecula Valley Unified School District's assessment of Student, during overlapping time periods. In addition, consolidation furthers the interests of judicial economy because both cases will involve much of the same evidence, and testimony from many of the same witnesses. Accordingly, consolidation is granted.

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).)

There is good cause for Temecula Valley Unified School District's motion to continue the hearing to April 19, 2022, because there has been no prehearing conference yet in District's Case since it was filed only four days ago. It is necessary that a prehearing conference addressing the issues in both Student's Case and District's Case be conducted before the consolidated matter proceeds to hearing. The requested two-week continuance will allow time for a prehearing conference to be conducted in both consolidated cases.

The request for continuance is granted for good cause. All previously scheduled dates are vacated. The case shall proceed as follows:

Prehearing Conference: April 11, 2022, at 1:00 PM.

All other prehearing matters shall be addressed at the April 11, 2022 PHC. All prehearing motions must be filed three business days before that PHC.

Due Process Hearing: April 19, 2022, through April 21, 2022.

The hearing shall begin at 9:30 AM on each day of the hearing, and end about 3:30 PM each day, unless otherwise ordered. The hearing shall continue day to day at the discretion of the ALJ. The hearing shall be conducted by videoconference using the Microsoft Teams application.

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.

ORDER

1. Temecula Valley Unified School District's Motion to Consolidate is granted.
2. Student's Case, OAH Case number 2022010822, is designated as the Primary Case. All dates previously set in District's Case, OAH case number 2022030826, called the Secondary Case, are vacated.
3. Temecula Valley Unified School District's Motion to Continue is granted. The Prehearing Conference in the consolidated matter shall be held on April 11, 2022, at 1:00 PM, and shall be conducted via videoconference using the Microsoft Teams application. The Due Process Hearing in the consolidated matter shall be held on April 19, 2022, through April 21,

2022, beginning at 9:30 AM on all days, and ending about 3:30 PM on all days, and continuing day to day as needed at the discretion of the Administrative Law Judge. The hearing shall be conducted via videoconference using the Microsoft Teams application.

4. 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 Primary Case, OAH case number 2022010822.

IT IS SO ORDERED.

Christine Arden

Christine Arden

Administrative Law Judge

Office of Administrative Hearings