BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:

PARENTS ON BEHALF OF STUDENT

and

BERKELEY UNIFIED SCHOOL DISTRICT

OAH CASE NUMBER 2026070292

OAH CASE NUMBER 2026100280

ORDER FOLLOWING PREHEARING CONFERENCE GRANTING REQUEST FOR CONSOLIDATION AND CONTINUANCE

OCTOBER 14, 2026

On October 12, 2026, Administrative Law Judge Chris Butchko, Office of Administrative Hearings, referred to as OAH, 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. Student's parents appeared on behalf of Student. Lenore Silverman, Attorney at Law, and Stephanie Olsen, Attorney at Law, appeared on behalf of Berkeley Unified School District. OAH provided a Vietnamese-language interpreter,

Rose Doan, to assist Parents by interpreting the proceedings. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

HEARING DATES, TIMES, AND LOCATION

Berkeley moved on October 7, 2026, to consolidate this matter filed by Student with its action filed on that date. Student filed an opposition to the motion on October 8, 2026. Berkeley filed a reply to Student's opposition, also on October 8, 2026. On October 12, 2026, Student filed a supplemental opposition to Berkeley's motion along with a series of exhibits.

The motion to consolidate was discussed with the parties at the PHC. After discussion and clarification of what would be entailed if the matters were consolidated, Parents withdrew their opposition to consolidation on the condition that the hearing on the consolidated matter be continued to allow them time to prepare for the additional issues and look into obtaining legal representation.

Berkeley agreed to seeking a continuance of the hearing dates, and proposed that the consolidated matter be mediated. Parents agreed to the proposal for mediation.

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 questions of law or fact concerning Student's disability, need for services, and appropriate placement, and Berkeley's knowledge of Student's baseline abilities. Student does not oppose the motion and will not be prejudiced by consolidation of the cases. Accordingly, consolidation will be granted.

Student's case is designated as the primary case. All dates previously set in Student's case, OAH case number 2026070292, and Berkeley's case, OAH case 2026100280, are vacated. New dates for the consolidated matter are set below. Should a party wish to dismiss their case or if both parties wish to dismiss, each party in the consolidated matter must file individual requests to dismiss their own case. 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 by Student, OAH case 2026070292.

The parties sought a continuance of the dates set for hearing. Hearing in the action filed by Berkeley is set to begin on October 26, 2026. The parties agreed that date would not allow sufficient time for them to prepare for hearing and discuss settlement. In addition, Parents wished to explore the possibility of retaining counsel to represent Student in this matter. The joint motion for continuance was made orally at the PHC and thus not timely filed three days prior to the prehearing conference. The parties established good cause for not filing the motion before this PHC because the motion to consolidate was opposed prior to the PHC. Only after the consequences of consolidating the matters was discussed at the PHC was a continuance under consideration.

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. Consolidation of the two actions constitutes an unanticipated change in the status of the case, and Parents' wish to pursue the possibility of retaining counsel weighs in favor of continuance in the interests of justice. The case shall proceed as follows:

MEDIATION DATE is December 17, 2026, 9:00 AM to 4:30 PM.

MEDIATION will occur via telephone or videoconference.

PREHEARING CONFERENCE will be held on Monday, January 11, 2027, at 3:00 PM.

All other prehearing matters shall be addressed at the resumption of the prehearing conference on January 11, 2027. All prehearing motions must be filed three business days before the PHC.

DUE PROCESS HEARING will be held Wednesday, January 20, 2027, through Thursday, January 21, 2027.

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.

ORDER INCLUDES ALL RULINGS

This Order includes all rulings made at the prehearing conference. 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.

IT IS SO ORDERED.

Chris Butchko

Chris Butchko
Administrative Law Judge
Office of Administrative Hearings