BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:

PARENT ON BEHALF OF STUDENT,

and

MORAGA SCHOOL DISTRICT,

OAH CASE NUMBER 2024020262

OAH CASE NUMBER 2024010510

ORDER FOLLOWING PREHEARING CONFERENCE FOR HEARING BY VIDEOCONFERENCE AND GRANTING MOTION TO CONSOLIDATE

FEBRUARY 13, 2024

On February 12, 2024, Administrative Law Judge Laurie Gorsline, 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.

Jennifer Baldassari and Anna Wood, Attorneys at Law, appeared on behalf of Moraga School District. Deborah Jacobson, Attorney at Law, appeared on behalf of

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

HEARING DATES, TIMES, AND LOCATION

On January 12, 2024, Moraga School District filed a Due Process Hearing Request in case number 2024010510, with OAH, naming Student. The case filed by Moraga School District is called District's Case.

On February 7, 2024, Student filed with OAH a Request for Due Process Hearing in case number 2024020262, naming Moraga School District. The case filed by Student is called Student's Case.

On February 7, 2024, Student filed a Motion to Consolidate District's Case with Student's Case. On February 9, 2024, Moraga School District filed opposition to the motion. The parties argued the motion at the PHC.

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, both cases request a determination of the appropriateness of the August 28, 2023 psychoeducational evaluation conducted by Moraga School District. In addition, consolidation furthers the interests of judicial economy because some of the same

witnesses will be testifying in both cases, and some of the same documentary evidence will be necessary.

- Student's Motion to Consolidate is granted.

- Student's Case, OAH case number 2024020262, is designated as the primary case. All dates previously set in District's Case, OAH case number 2024010510, are vacated.

- The PHC and due process hearing in the consolidated matter shall be heard on the dates in Student's Case. The PHC will be held on March 18, 2024, at 10:00 AM, and the due process hearing shall be held on March 26 through 28, 2024, beginning at 9:30 AM on all days, continuing day to day as needed at the discretion of the Administrative Law Judge.

- 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 2024020262.

The parties shall immediately notify all potential witnesses of the hearing dates and shall subpoena witnesses, if necessary, to ensure that the witnesses will appear to testify. A party's failure to notify or subpoena a witness to testify will not be considered good cause to continue the hearing. Instructions for issuing and responding to subpoenas and optional forms for subpoenas can be found on the website at https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Forms/Subpoenas?search=special%20education%20subpoena.

RESPONSE TO COMPLAINT IN STUDENT'S CASE

OAH has not received a copy of Moraga School District's response to Student's complaint. Moraga School District shall file its response with OAH by February 16, 2024. (*M.C. v. Antelope Valley Unified School Dist.* (9th Cir. 2017) 858 F.3d 1189, 1199-1200.)

MOTIONS

On February 8, 2024, Moraga School District filed two motions to quash regarding subpoenas issued by Student to Moraga School District and Michael Giambona, Ph.D. On February 9, 2024, Student filed opposition to the motion regarding the subpoena issued to Moraga School District. On February 12, 2024, Moraga School District filed a reply to the opposition.

At the PHC, Student orally withdrew the subpoenas issued to Moraga School District and Dr. Giambona, including the amended subpoena issued to Moraga School District.

Given that Student has withdrawn the subpoenas issued to both Moraga School District and Dr. Giambona, the motions to quash are now moot.

No other prehearing motions are pending. Any motion not filed three business days before the next PHC, shall be supported by a declaration under penalty of perjury establishing good cause why the motion was not timely filed.

PHC STATEMENTS

PHC statements and motions are due to OAH no later than three business days before the next PHC. Late motions will only be considered if good cause is established for the late filing. Both parties shall file updated PHC statements. Student's PHC

statement shall clarify the issues for hearing, including identifying what portions of the August 2023 psychoeducational evaluation Student claims were inappropriate and why. Student shall make clear for each area in contention whether Student is claiming that area was never assessed, or whether Student is claiming that the area was inappropriately assessed and why.

SETTLEMENT

The parties are encouraged to continue working together to reach an agreement before the due process hearing. The parties shall inform OAH in writing immediately if they reach a settlement or otherwise resolve the dispute before the scheduled hearing. In addition, if a settlement is reached 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. At the same time, the parties should send the signature page of the signed agreement or a letter withdrawing the case to OAH by visiting OAH Secure e-file at https://www.applications.dgs.ca.gov/oah/oahsftweb.

If a full and final written settlement agreement is reached after 4:00 PM the day prior to 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.

Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received and processed 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

The 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.

Laurie Gorsline

Laurie Gorsline
Administrative Law Judge
Office of Administrative Hearings