BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:

PARENT ON BEHALF OF STUDENT,

and

PLEASANTON UNIFIED SCHOOL DISTRICT,

OAH CASE NUMBER 2023120389

OAH CASE NUMBER 2024041122

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

MAY 3, 2024

On May 3, 3034, 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.

Nicole Hodge Amey, Attorney at Law, appeared on behalf of Student. Shawn Olson Brown, Attorney at Law, appeared on behalf of Pleasanton Unified School District.

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

HEARING DATES, TIMES, AND LOCATION

MOTION TO CONSOLIDATE AND MOTION TO CONTINUE THE HEARING

On December 12, 2023, Pleasanton Unified filed with the Office of Administrative Hearings a Request for Due Process Hearing in OAH case number 2023120389, called District's Case, naming Student.

On December 29, 2023, OAH continued the hearing to March 26, 2024, so the parties could participate in mediation. On March 18, 2024, OAH continued the hearing to May 14, 2024, because of District's counsel's scheduling conflict and because the assessment Student's expert witness was conducting would not be completed for another month.

On April 24, 2024, Student obtained counsel who filed a notice of representation in District's Case.

On April 29, 2024, Student filed with the OAH a Request for Due Process Hearing in OAH case number 2024041122, called Student's Case, naming Pleasanton Unified.

The same day, Student filed motion to consolidate Student's Case with District's Case, along with a motion to continue the hearing in District's Case. The motion to continue was made on the ground Student's counsel is unavailable because she has a pre-paid vacation during the scheduled hearing. The motion to consolidate was made on the grounds both cases involve common questions of law and will require many of the same witnesses to testify.

On May 1, 2024, District filed a notice of non-opposition to the motion to consolidate. Pleasanton Unified did not file a response to the motion to continue.

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 involve the appropriateness of the September 8, 2023, psychoeducational evaluation. In addition, consolidation furthers the interests of judicial economy because both cases will involve presentation of some of the same witness testimony and documentary evidence. Accordingly, Student's motion to consolidate is granted.

1. Student's Case is designated as the primary case. All dates previously set in District's Case, OAH case number 2023120389 are vacated.
2. The PHC and due process hearing in this consolidated matter shall be held on the dates currently scheduled in the Student's Case, OAH case number 2024041122.
3. The PHC shall be held on June 10, 2024, at 10:00 AM. The hearing shall be held on June 18 through 20, 2024, and continue day to day at the discretion of the ALJ. The hearing shall begin at 9:30 AM each day and generally end at 3:30 PM, unless otherwise ordered.
4. PHC statements and motions are due to OAH no later than three business days before the PHC. Both parties are ordered to file new PHC statements

at least three business days before the next PHC. In its PHC statement, Pleasanton Unified shall clarify its second issue as discussed during the PHC held on March 18, 2024, as reflected on the record. Late motions will only be considered if good cause is established for the late filing.

5. 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 2024041122.
6. Because consolidation has been ordered and the dates in District's Case have been vacated, Student's motion to continue the hearing dates in District's case is moot, and therefore denied.

During the PHC, Student's counsel indicated she had a conflict with the June 2024 hearing dates. Because the motion to continue did not seek a continuance of the hearing dates in Student's Case, the ALJ informed the parties that a written motion demonstrating good cause was required. Student's counsel was ordered to meet and confer with District's counsel before filing any motion for continuance, and in the event of disagreement, the parties were required to document their efforts to meet and confer in any papers filed with OAH.

HEARING LOCATION

OAH is authorized to conduct due process hearings by videoconference or telephone. (Cal. Code Regs., tit. 5, § 3082, subd. (g).) OAH will conduct the due process hearing by videoconference using the Zoom application. Unless otherwise ordered, participants are required to appear by videoconference using computer or device with video capability and Zoom.

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.

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.

IT IS SO ORDERED.

Laurie Gorsline

Laurie Gorsline
Administrative Law Judge
Office of Administrative Hearings