BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTER OF:

PARENTS ON BEHALF OF STUDENT,

and

CUPERTINO UNION SCHOOL DISTRICT.

OAH CASE NUMBER 2026030714

OAH CASE NUMBER 2026041060

# ORDER FOLLOWING PREHEARING CONFERENCE FOR HEARING BY VIDEOCONFERENCE GRANTING MOTION TO CONSOLIDATE, AND SETTING ORDER TO SHOW CAUSE RE: SANCTIONS AGAINST STUDENT'S COUNSEL

MAY 11, 2026

On May 11, 2026, Administrative Law Judge Laurie Gorsline, Office of Administrative Hearings, held a prehearing conference by videoconference in District's Case. The Administrative Law Judge is called an ALJ. The Office of Administrative Hearings is called OAH. The prehearing conference is called a PHC.

Attorney Jennifer Nix appeared on behalf of Cupertino Union School District. No one appeared on behalf of Student. The ALJ waited approximately five minutes before beginning the PHC and repeatedly checked the waiting room during the PHC. However, Attorney Jennifer Chang, attorney of record for Student, failed to appear at the PHC. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

## ORDER TO SHOW CAUSE RE SANCTIONS

On April 23, 2026, Attorney Jennifer Chang filed a Notice of Representation on behalf of Student in District's Case. The same day, OAH sent the parties' attorneys a Scheduling Order in District's Case setting the prehearing conference for May 11, 2026, at 1:00 PM. The parties were each ordered to file a Prehearing Conference Statement at least three business days before the PHC. The parties were also ordered to file a Participant Information Form with OAH two business days before the PHC. On May 10, 2026, OAH sent Attorney Chang an electronic Zoom evite for the PHC to the email address listed on her Notice of Representation.

Despite being ordered to do so, Attorney Chang failed to file a Prehearing Conference Statement or a Participant Information Form with OAH in District's Case. In addition, Attorney Chang failed to appear at the May 11, 2026, PHC, and she was not excused from appearing.

Unless District files a dismissal of District's Case before the July 31, 2026, PHC begins, Attorney Jennifer Chang is ordered to appear on July 31, 2026, at 1:00 PM, and show cause why sanctions should not be imposed on Attorney Chang for failing to comply with OAH's orders, and for failing to appear at the May 11, 2026 PHC. The

hearing on the Order to Show Cause will be held by videoconference or telephone, unless otherwise ordered.

Attorney Chang shall address the Order to Show Cause in writing by filing and serving her written argument no later than July 22, 2026, at 5:00 PM. District shall file any responsive brief by July 28, 2026, at 5:00 PM.

## HEARING DATES, TIMES, AND LOCATION

## MOTION TO CONSOLIDATE

On March 17, 2026, Student filed with OAH a Due Process Hearing Request in case number 2026030714, naming Student. The case filed by Student is called Student's Case. On April 17, 2026, OAH granted the parties' joint request filed in Student's Case for a June 12, 2026, mediation, and a continuance of the hearing to August 11 through 13, 2026.

On April 23, 2026, District filed with OAH a Request for Due Process Hearing in case number 2026041060, naming Student. The case filed by District is called District's Case. District's Case seeks to have OAH determine whether the January 24, 2026, functional behavior assessment was appropriate. The hearing in District's Case is set for May 19 through 21, 2026.

On April 23, 2023, District filed a Motion to Consolidate District's Case with Student's Case. Student did not file a response to the motion.

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 appear to involve a determination regarding Student's behavior needs in 2026. In addition, consolidation furthers the interests of judicial economy because some of the same witness testimony and documentary evidence will be necessary. Accordingly, consolidation is granted.

1. District's Motion to Consolidate is granted.
2. Student's Case is designated as the primary case. All dates previously set in District's Case, OAH case number 2026041060, are vacated.
3. The mediation, prehearing conference and due process hearing in this consolidated matter shall be held on the dates currently scheduled in the Student's Case, OAH case number 2026030714.
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 Student's Case, OAH case number 2026030714.

## PREHEARING CONFERENCE STATEMENTS

The parties are ordered to timely file PHC statements for the consolidated PHC, now scheduled for July 31, 2026. Student's PHC statement shall separately and concisely state each issue Student seeks to have the ALJ decide, in conformity with the following instructions.

Student shall clearly state each claim separately, and where applicable, whether Student is challenging the IEP offer or the failure to implement an IEP, so that the ALJ

understands whether and which "snapshot" in time to apply to Student's claims. (See, *J.W. v. Fresno* (9th Cir. 2010) 626 F.3d 431, 439; *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrmann v. East Hanover Board of Education* (3d Cir. 1993) 993 F.2d 1031, 1041[whether a student was offered or denied a FAPE is determined by looking to what was reasonable at the time the IEP was developed, not in hindsight].)

Implementation claims may not be combined with challenges to inadequate IEP offers. Those are separate issues and a different legal analysis must be made with respect to those claims, as compared to inadequate IEP offers. (See*, Van Duyn v. Baker School Dist. 5J* (9th Cir. 2007) 502 F.3d 811, 815, 819-820, 822 [a material failure to implement an IEP occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP].)

For challenges to IEP offers as in Issue a1 on page 21 of the complaint, Student shall identify each IEP at issue by date in chronological order, and for each IEP identify each offered component being challenged, including each goal and service, as well as each goal area and service that should have been offered in that IEP but was not.

For Issue a1, Student shall specify what "provide" means and if it means something different than offer or implement. If provide means the failure to implement, Student shall identify chronologically each IEP allegedly not implemented and for each IEP at issue, separately identify each IEP component allegedly not implemented, and when each of these failures occurred.

Student shall be prepared at the next PHC to identify in the pleading by page and line number where each claim regarding each IEP was made.

## PARTICIPANT INFORMATION FORM

Both parties have an ongoing obligation to ensure that OAH has current information on the Participant Information Form filed with OAH and shall file an updated Form as necessary. The Participant Information Form is not served upon the opposing party. The ongoing obligation to ensure that the Participant Information Form filed with OAH is current does not change the parties' statutory obligation to timely disclose their witnesses to the other party(s) at least five business days prior to hearing. The parties must file an updated Participant Information Form to inform OAH of any changes, additions, or deletions, including the required information no later than 5:00 PM at least two business days before the first day of hearing.

## 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