BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

CAPISTRANO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBERS 2022120076

ORDER FOLLOWING PREHEARING CONFERENCE DENYING MOTION TO CONSOLIDATE AND REQUEST FOR CONTINUANCE

APRIL 21, 2023

On April 21, 2023, Administrative Law Judge Brian H. Krikorian, Office of Administrative Hearings 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. Parent appeared on behalf of Student. S. Daniel Harbottle, Attorney at Law, appeared on behalf of Capistrano Unified School District. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

HEARING DATES, TIMES, AND LOCATION

Capistrano Unified moved to consolidate two Student filed complaints and to continue the prehearing conference and due process hearing based on the new filing.

CONSOLIDATION

On November 30, 2022, Student filed a complaint and requested a due process hearing from OAH which was identified as Case No. 2022120076. The First Complaint contained 14 issues. Student's counsel later withdrew from representation and Student's parent assumed representation of Student's interests.

On April 12, 2023, Parent filed the Second Complaint, which contained one issue with multiple subparts regarding the November 2022 Annual Individualized Education Program ("IEP") for Student. The November 15, 2022 IEP was not at issue in Student's First Complaint. In the email submitting the Second Complaint to counsel for the Capistrano Unified, Parent indicated that Student was open to consolidation of the two matters, and the Second Complaint contains a note to the same effect. Capistrano Unified filed a motion to consolidate the two Student filed complaints.

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].)

At the PHC, the undersigned ALJ tentatively granted the motion to consolidate. However, upon further reflection, if Student wishes to have both issues resolved together the more expeditious procedure would be to have Parent file a motion to amend the current action so there is only one operative complaint and dismiss Student's Case number 2023040486. As such, Parent may file an amended complaint in Case number 2022120076, along with a motion to amend. At that point, a new case schedule will be reissued. For the foregoing reasons, the Motion to Consolidate is denied.

CONTINUANCE

Capistrano Unified filed a motion to continue the current hearing dates. Capistrano Unified filed the motion to continue after to the motion to consolidate in case the former was not granted. Capistrano Unified argued that the issues in both cases would take longer than the time allotted for the current hearing. The motion was timely filed three days prior to the prehearing conference. The motion was not opposed.

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).)

Because of the procedural nature of the two filed Student cases, the request for continuance is granted for good cause. The parties should be advised that further continuances may only be granted based upon a showing of good cause. All previously scheduled dates in OAH Case 2022120076 are vacated. The case shall proceed as follows:

PREHEARING CONFERENCE will be held on May 26, 2023, at time 1:00 PM.

All other prehearing matters shall be addressed at the May 26, 2023 prehearing conference. All prehearing motions must be filed three business days before the PHC.

Due Process Hearing: June 6, 7, and 8, 2023.

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.

IT IS SO ORDERED.



Brian H. Krikorian

Administrative Law Judge

Office of Administrative Hearings