BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS OF:

PARENT ON BEHALF OF STUDENT

v.

NEWMAN-CROWS LANDING UNIFIED SCHOOL DISTRICT,

OAH CASE NUMBERS 2020120626 AND 2020020479

and

NEWMAN-CROWS LANDING UNIFIED SCHOOL DISTRICT

v.

PARENT ON BEHALF OF STUDENT,

OAH CASE NUMBER 2021030340

ORDER FOLLOWING PREHEARING CONFERENCE GRANTING REQUEST FOR CONSOLIDATION AND CONTINUANCE

MARCH 15, 2021

On March 12, 2021, Administrative Law Judge Chris Butchko, 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. Nicole Hodge Amey, Attorney at Law, appeared on behalf of Student. Rachael Tillman, Attorney at Law, and Anne Sherlock, Attorney at Law, appeared on behalf of Newman-Crows Landing Unified School District. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

PENDING MOTIONS

At the start of the PHC, the ALJ and the parties discussed the pending motions in the matter. On March 8, 2021, Student filed a motion to compel Vacaville to produce his full educational records. On March 9, 2021, Vacaville filed a motion to consolidate these cases with an action it was filing, which OAH gave case number 2021030340. Also on March 9, 2021, Vacaville also filed a motion to dismiss certain counts of Student's amended complaint because they sought relief under Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, and state civil rights laws. On March 11, 2021, Vacaville filed a further motion, which sought to bifurcate the hearing. During the discussion of the pending motions, Student renewed his motion for a continuance of the hearing date, arguing that he needed time to prepare for the hearing.

MOTION TO CONTINUE

The motion was not filed three days before the PHC. As part of his motion seeking consolidation of his actions, Student had included a motion for a continuance, which OAH denied on March 5, 2021. At the time of the original motion, Student did not know that District would be filing its own action or that the date of hearing for his second case would be moved forward. When Student filed his second action, OAH set the hearing for April 6 through 8, 2021. As part of the ruling on the motion to consolidate, OAH set the hearing for the consolidated cases for March 23 through 25, 2021. Accordingly, Student established good cause for not filing the motion three days before this PHC and proceeding by oral motion.

Student argued that he needed additional time to be prepared to try all three cases in a consolidated action, and, as he had done in his written motion, suggested that the case be heard on the April 6 through 8 dates set in the scheduling order for his second case. Vacaville opposed the motion because its counsel were not available on those dates. After discussion with the ALJ, both sides established that they were available to try the case on May 18 through 20, 2021.

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. Parties are entitled to a reasonable amount of time to prepare for hearing, and Student has established that he needs a continuance to secure assessments and expert testimony to present at hearing. All previously scheduled dates are vacated. The case shall proceed as follows:

Prehearing Conference: Friday, May 7, 2021, at 10:00 AM.

All other prehearing matters shall be addressed at the May 7, 2021 prehearing conference. All prehearing motions must be filed three business days before the PHC.

Due Process Hearing: May 18 through 20, 2021.

The hearing shall begin at 9:30 AM on the first day of the hearing and at 9:00 AM on all other days, unless otherwise ordered. The hearing shall continue day to day at the discretion of the ALJ.

OAH is authorized to conduct due process hearings by videoconference or telephone. (Cal. Code Regs., tit. 5, § 3082, subd. (g).) Based on state and federal guidance to address safety procedures due to the novel coronavirus, COVID-19, OAH

will conduct the due process hearing by videoconference using the Microsoft Teams application. Unless otherwise ordered, participants are required to appear by videoconference using a webcam and Microsoft Teams.

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.

MOTION TO COMPEL

At the PHC, counsel also discussed Student's pending motion to compel. Vacaville reported that it had made a further production of educational records to Student, which it believed were all the remaining and outstanding records. Student had not exhaustively reviewed the production, but accepted Vacaville's representation that the production was complete, subject to a more complete review of the documents produced. Accordingly, the motion to compel is denied without prejudice to being renewed at a later date.

MOTION TO CONSOLIDATE

District moved to consolidate the action it filed on March 9, 2021, with the two matters filed by Student. Student did not oppose the motion at the PHC, but requested the full time allotted for filing a response before OAH made a ruling. That time has now run, and no opposition has been received from Student. The motion is unopposed.

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].) 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. OAH considers all relevant facts and circumstances in determining whether good cause exists to grant an extension. (See Cal. Rules of Court, rule 3.1332(d).)

District's case closely tracks Student's second case, and involves the same time period and events, and therefore the same witnesses and documents. Judicial economy and the convenience of the witnesses will be served by granting consolidation. Accordingly, cases 2020120626, Student's first action, 2021020479, Student's second action, and 2021030340, District's action, will be consolidated. This matter, OAH case number 2020120626, will remain the primary case, and all further filings should be made under that case number. The case will proceed to hearing on the dates set in this Order.

MOTION TO DISMISS

Vacaville sought to dismiss issue 8 in Student's first action and issue 3 in Student's second action, asserting that both actions included the same claim asserting rights under Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, and state civil rights laws. Vacaville noted that Student's due process hearing requests included footnotes to those claims acknowledging that they presented issues beyond OAH's jurisdiction. At the PHC, Student again requested the full time

allotted for filing a response before OAH made a ruling. That time has now run, and no opposition has been received from Student. The motion is unopposed.

OAH does not have jurisdiction to decide claims based on Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), Section 1983 of Title 42 United States Code, the Americans with Disability Act (42 U.S.C. §§ 1201, et seq.), or the Unruh Civil Rights Act (Civ. Code, § 51). Accordingly, the motion to dismiss issue 8 from Student's first action and issue 3 from Student's second action is granted.

MOTION TO BIFURCATE

District's motion to bifurcate the hearing was filed on March 11, 2021. The motion was discussed at the PHC. Student's opposition to the motion was taken orally, and the motion was denied.

Vacaville sought to separate the hearing into two phases, separated by a break of five days. In the first phase, the parties would present argument on the issue of whether some of Student's claims were barred by the statute of limitation applicable to actions before OAH. The second part would concern the substance of the surviving claims. Vacaville proposes this procedure as a means of achieving judicial economy.

The specific manner of conducting a particular hearing is left to the discretion of the assigned judge. OAH generally does not bifurcate hearings, and Vacaville's suggestion for a bifurcation and multi-day break between the parts of the hearing is not adopted. Further details regarding the manner in which the case will be heard and the evidence presented will be worked out with the parties at the continuation of the prehearing conference on May 7, 2021.

ALL OTHER PHC MATTERS

All other prehearing matters in this case will be taken up at the May 7, 2021 resumption of the prehearing conference.

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.

Chris Butchko

Chris Butchko
Administrative Law Judge
Office of Administrative Hearings