BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:

PARENTS ON BEHALF OF STUDENT,

and

SAN DIEGO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024120686

OAH CASE NUMBER 2025040617

ORDER FOLLOWING PREHEARING CONFERENCE FOR HEARING BY VIDEOCONFERENCE GRANTING MOTION TO CONSOLIDATE AND CONTINUANCE OF THE PREHEARING CONFERENCE AND DUE PROCESS HEARING

APRIL 21, 2025

On April 21, 2025, Administrative Law Judge Laurie Gorsline, Office of Administrative Hearings, held a prehearing conference by videoconference in OAH Case number 2024120686. The Administrative Law Judge is called an ALJ. The Office of Administrative Hearings is called OAH. The prehearing conference is called a PHC.

Jennifer Holzman and Marymichelle Lotano, Attorneys at Law, appeared on behalf of Student. Rebecca Diddams, Attorney at Law, appeared on behalf of San Diego Unified. Dr. Royal Lord, Program Specialist for San Diego Unified, also attended the PHC. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

HEARING DATES, TIMES, AND LOCATION

MOTION TO CONSOLIDATE, STUDENT'S NOTICE OF REPRESENTATION IN DISTRICT'S CASE AND CONTINUANCE OF THE HEARING TO THE DATES IN DISTRICT'S CASE

On December 17, 2024, Student filed a Request for Due Process Hearing, called Student's complaint, in OAH case number 2024120686, naming San Diego Unified. The case filed by Student is referred to as Student's Case. On March 12, 2025, OAH granted Student's motion to amend Student's complaint, and the hearing was rescheduled to begin on April 29, 2025.

On April 14, 2025, San Diego Unified filed with OAH a Request for Due Process Hearing, called District's complaint, in OAH case number 2025040617, naming Student. The case filed by San Diego Unified is referred to as District's Case. San Diego Unified served District's complaint on the attorneys representing Student in Student's Case, but not Parent. The prehearing conference in District's Case is scheduled for April 28, 2025, at 10:00 AM and the hearing is scheduled for May 6 through 8, 2025.

On April 14, 2025, San Diego Unified filed a Motion to Consolidate District's Case with Student's Case. Student did not file a response. San Diego Unified served the

motion to consolidate on the attorneys representing Student in Student's Case, but not on Parent.

During the PHC, Student's attorney stated that they were representing Student in the District's Case and were prepared for the ALJ to rule on the motion to consolidate. Student's counsel is ordered to file and serve a Notice of Representation that they are representing Student in the District's Case by no later than 5:00 PM on April 23, 2025.

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].)

In District's Case, San Diego Unified asserts two issues for hearing. The first issue concerns the appropriateness of District's December 16, 2024 psychological assessment, such that Parent is not entitled to an independent educational evaluation. The second issue is whether the February 5, 2025 individualized education program, called an IEP, as amended on March 12, 2025, offered Student a free appropriate public education, called a FAPE, such that District may implement it without Parent's consent.

In Student's Case, Student asserts six enumerated issues, including whether San Diego denied Student a FAPE during the 2024-2025 school year by failing to offer appropriate services, supports, modifications, and/or accommodations, and by failing to place her in the least restrictive environment. No where in the complaint does Student identify the date of the IEP at issue that allegedly denied Student a FAPE during the

2024-2025 school year. At the PHC, Student's counsel indicated the IEP at issue for the 2024-2025 school year in Student's Case was not the same IEP at issue in District's Case, but it was an earlier IEP developed during the 2023-2024 school year.

Notwithstanding the different legal issues in the two cases, both cases likely involve common questions of fact regarding Student's background and history. In addition, consolidation furthers the interests of judicial economy because some of the same witnesses and documentary evidence will be presented in both cases. Significantly, given the given the need for American sign language interpreters for at least three of the witnesses, consolidation of Student's Case with District's Case will result in a more efficient use of hearing resources. Moreover, Student did not oppose the motion. Accordingly, the request for consolidation is granted.

During the PHC, San Diego Unified indicated it intended that consolidation of the two cases would result in the hearing in Student's Case be continued to the later dates in District's Case. At the PHC, Student also agreed to a continuance of the hearing in Student's Case to the dates now scheduled in District's Case.

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).)

As stated on the record during the PHC, the ALJ finds good cause for continuing the hearing in Student's Case to the dates in District's Case. District's Case is not scheduled for a prehearing conference until April 28, 2025. Student's counsel has not yet filed a notice of representation in District's Case. Moreover, Student has not filed a compliant PHC Statement regarding the issues in Student's Case. A continuance is also warranted so the parties can meet and confer to agree upon the dates the witnesses who require an American sign language interpreter will testify so OAH can obtain interpreters for those dates. The ALJ also found good cause for the continuance to give the parties the time to meet and confer to determine if they will be seeking a mediation now that OAH has granted consolidation.

Accordingly, District's Motion to Consolidate is granted. Student's Case is designated as the primary case. All dates previously set in Student's Case, OAH case number 2024120686, are vacated. The hearing in Student's Case is continued to the dates scheduled in District's Case, OAH Case No. 2025040617. 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 2025040465. The continued dates for the consolidated matter are as follows:

PREHEARING CONFERENCE is continued to April 28, 2025, at 10:00 AM.

DUE PROCESS HEARING will take place on May 6 through 8, 2025 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.

The PHC and due process hearing will be held by videoconference or telephone, unless otherwise ordered. Motions are due to OAH no later than three business days before the PHC. Late motions will only be considered if good cause is established for the late filing.

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.

PHC STATEMENTS

On December 20, 2024, OAH issued a Scheduling Order in Student's Case. A new Scheduling Order was issued on March 13, 2025, after Student's amended complaint was filed. The Scheduling Order stated that the parties were required to file a PHC statement containing a concise statement of the issues to be decided at the due process hearing.

On April 17, 2025, Student filed a PHC statement in Student's Case. Student's PHC statement failed to comply with the Scheduling Order in that it neglected to

contain a concise statement of the issues. Instead of clearly setting forth each of the separate issues for hearing, Student merely copied and pasted into the PHC statement six vague issues from her amended complaint, which failed to adequately provide a clear statement of each of the issues for hearing. At the PHC, the ALJ addressed the inadequacy of Student's PHC statement, as reflected on the record. Because Student did not file a compliant PHC statement, the scope of Student's issues is unclear.

Both parties are ordered to file and serve updated PHC statements at least three business days before the next PHC regarding the consolidated hearing. Student shall file a new PHC statement in conformity the ALJ's instructions given during the PHC clearly specifying the issues for hearing. Among other things, Student shall identify by date each IEP Student is challenging. For each IEP Student shall clearly and separately identify each placement, service, support, modification, and accommodation Student is challenging or missing, including specifying whether Student is claiming that a particular service, support, modification, or accommodation offered was inappropriate, inadequate or insufficient, or whether a particular service, support, modification, or accommodation should have been offered, but was not.

LANGUAGE INTERPRETERS AND REASONABLE ACCOMMODATIONS

On April 21, 2025, District notified OAH for the first time that it required an American sign language interpreter for three of its witnesses. District requested permission to use its own interpreters and agreed to bear the cost.

District's request to use its own interpreters was denied at the PHC. Hearing interpreters are required to be independent and cannot be employed by or affiliated with any party. OAH will provide the interpreters at hearing.

The parties were ordered to meet and confer before the next PHC and determine the dates in which an American sign language interpreter will be required at hearing. The parties shall agree upon the dates the witnesses who require an American sign language interpreter will testify at hearing so OAH can obtain interpreters for those dates. The parties shall include in their PHC statements the witness schedule they have agreed upon for the witnesses who require an American sign language interpreter. If any of the parties, as opposed to just witnesses, require an interpreter, the parties shall specify this in their PHC statements.

District also requested an accommodation in the form of captioning for one of the witnesses. District was ordered to promptly follow the instructions in the next paragraph to apply for the requested accommodation.

A party or participant in this case, such as a witness, requiring reasonable accommodation to participate in a mediation or hearing may contact OAH at (916) 263-0880, or send an email to OAHADA@dgs.ca.gov as soon as the need is known. The e-mail should have "Request for Accommodation" in the Subject Line. Additional information concerning requests for reasonable accommodation is available on OAH's website at: https://www.dgs.ca.gov/OAH/Services/Page-Content/Office-of-Administrative-Hearings-Services-List-Folder/Request-Reasonable-Accommodations-for-OAH-Legal-Proceedings.

MEET AND CONFER

There was a mediation in Student's Case, but no mediation has been scheduled in District's Case. Now that consolidation has been granted, the parties are ordered to meet and confer to determine if they intend to request mediation prior to hearing, and if so, agree upon mediation dates and determine whether they will be seeking a

continuance of the hearing to participate in mediation and the dates of any proposed continuance. The parties shall address these matters in their PHC statements.

PARTICIPANT INFORMATION FORM

Student did not file a Participant Information Form. Student shall file a Participation Information Form at least two business days before the next PHC.

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.

ORDER INCLUDES ALL RULINGS

This Order includes all rulings made at the PHC. 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