

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

v.

WEST COVINA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2015031205 (Primary)

WEST COVINA UNIFIED SCHOOL
DISTRICT

v.

PARENT ON BEHALF OF STUDENT,

OAH CASE NO. 2015010024

ORDER FOLLOWING PREHEARING
CONFERENCE AND GRANTING JOINT
MOTION TO CONSOLIDATE AND
CONTINUE PREHEARING
CONFERENCE AND HEARING DATES
IN CONSOLIDATED MATTERS AND
SETTING MEDIATION, PREHEARING
CONFERENCE AND DUE PROCESS
HEARING

On March 30, 2015, a telephonic prehearing conference was held before Administrative Law Judge Caroline A. Zuk, Office of Administrative Hearings in OAH Case Number 2015010024. Sundee M. Johnson, Attorney at Law, appeared on behalf of West Covina Unified School District (District). Henry Tovmassian, Attorney at Law, appeared on behalf of Student (Student). The prehearing conference was recorded. Based on discussion with the parties, the Administrative Law Judge issues the following order:

1. Joint Motion to Consolidate and Continue the Hearings.

Consolidation

On December 17, 2014, District filed a Request for Due Process Hearing in OAH Case No. 2015010024 (first case), naming Student. On January 12, 2015, OAH granted a continuance of the hearing to April 7, 2015. On March 24, 2015, Student filed a Request for Due Process Hearing in OAH Case No. 2015031205 (second case), naming District.

On March 25, 2015, the parties filed a joint motion to consolidate the first case with the second case, and to continue the consolidated matters to the dates in the second case.

Although no statute or regulation specifically provides a standard to be applied in deciding a motion to consolidate special education cases, OAH will generally consolidate matters that involve: a common question of law and/or fact; the same parties; 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].) OAH is disinclined to grant a motion to consolidate that is received shortly before a prehearing conference.

Both cases involve a common question of law and fact, specifically, whether District conducted an appropriate speech and language assessment and if so, whether Student is entitled to compensatory remedies. Factual determination of these issues involves the same witnesses and the same facts, thereby furthering the interests of judicial economy. Consolidation of the cases will not prejudice either party. Therefore, consolidation is granted.

Continuance

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.)

During the March 30, 2015 prehearing conference the parties represented they had a scheduling conflict with the May 11, 2015 prehearing conference date and May 19, 2015 hearing date scheduled in the second case. After discussion with the parties, the parties stipulated to new dates. Based upon a showing of good cause after considering all relevant facts and circumstances, including the stipulation of the parties, the joint request to continue the hearing dates in the consolidated matter is granted.

All hearing dates set in OAH Case No. 2015010024 (first case) are vacated. All dates in OAH Case No. 2015031205 (second case) are vacated except for the April 28, 2015 mediation date. The consolidated matters are continued to the dates set forth in sections 2 and 3 below.

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 No. 2015031205 (second case).

2. Hearing Dates, Times, and Location. The telephonic prehearing conference in the consolidated cases shall take place on May 4, 2015 at **1:00 p.m.** Please note that OAH does not hold prehearing conferences on the first Monday of the month before 1:00 p.m.

The due process hearing in the consolidated cases shall take place on May 11, 12, 13 and 14, and continue day to day, Monday through Thursday as needed at the discretion of the ALJ. The hearing shall begin each day at 9:00 a.m. and end at 4:30 p.m. with the exception of May 11, 2015 on which day the hearing shall begin at 1:30 p.m., unless otherwise ordered.

The hearing shall take place at the District's offices located at 1717 West Merced Avenue, West Covina, California 91790. District shall provide a facility for the hearing that fully complies with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Unruh Civil Rights Act (Civ. Code, § 51 et seq.), and all laws governing accessibility of government facilities to persons with disabilities.

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, as applicable.

3. Mediation Date, Times and Location. The mediation in the consolidated cases shall take place on April 28, 2015, from 9:30 a.m. to 4:30 p.m. The mediation shall take place at West Covina Unified School District, 1717 West Merced Avenue, West Covina, CA 91790

4. All other PHC matters shall be addressed at the prehearing conference on May 4, 2015.

5. 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 should 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.

IF A FULL AND FINAL WRITTEN SETTLEMENT AGREEMENT IS REACHED AFTER 5:00 P.M. 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. THE PARTIES SHOULD SIMULTANEOUSLY FAX THE SIGNATURE PAGE OF THE SIGNED AGREEMENT OR A LETTER WITHDRAWING THE CASE TO THE OAH AT THE FAXINATION LINE at 916-376-6319.

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 the evening prior to the hearing or the morning of the hearing.

If the matter settles subject to board approval, in addition to a signed copy of the signature page of the settlement agreement as noted above, the parties shall submit a request for a status conference and provide the date of the next board meeting. The hearing dates will not be cancelled without this information.

7. Failure to comply with this order may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

DATE: April 6, 2015

/s/

CAROLINE ZUK
Administrative Law Judge
Office of Administrative Hearings