BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

PANAMA-BUENA VISTA UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2019100660

ORDER GRANTING MOTION TO AMEND COMPLAINT AND DENYING MOTION FOR TELEPHONIC TESTIMONY AS MOOT

FEBRUARY 5, 2020

On October 11, 2019, Student filed a Due Process Hearing Request, referred to as a complaint, with the Office of Administrative Hearings, naming Panama-Buena Vista Unified School District. The Office of Administrative Hearings is referred to as OAH. This matter is currently scheduled for hearing beginning February 19, 2020.

On January 29, 2020, Panama-Buena Vista filed a request for telephonic witness testimony given a witness' unavailability to appear at the scheduled hearing. Student did not file a response.

On January 30, 2020, Student filed a Motion to Amend the Due Process Hearing Request and a proposed amended complaint. Panama-Buena Vista filed an opposition on February 3, 2020. Student filed a reply on February 5, 2020.

MOTION TO AMEND

An amended complaint may be filed when the other party consents in writing and is given the opportunity to resolve the complaint through a resolution session, or when the hearing officer grants permission. The hearing officer may grant permission at any time more than five days before the due process hearing. (20 U.S.C. §1415(c)(2)(E)(i).) The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. §1415(c)(2)(E)(ii).)

Student seeks to amend her complaint to include additional facts in support of her global contentions that Panama-Buena Vista failed to adequately assess her and address her needs. These additional factual assertions provide greater clarity as to the specific contentions at issue. For instance, Student specifies in her amended complaint that auditory processing was an area of suspected disability, includes additional factual support as to why Panama-Buena Vista was on notice of this suspected area, and contends that it failed to assess in this area and provide any follow-up audiologist services, rendering its individualized education programs or IEP's inadequate.

Panama-Buena Vista's argument that Student fails to raise any new issues and that the proposed amendments are included within her original complaint is not persuasive. In its December 20, 2019 response to Student's complaint, Panama-Buena Vista asserts that, "the only mention of auditory processing in Petitioner's six-page complaint is in the form of seeking an [independent educational evaluation] in this area but nowhere else mentions that this was an area of suspected disability."

Further, Student's proposed amended complaint specifies additional areas of need that she alleges Panama-Buena Vista failed to adequately address, such as: withdrawal; depression; functional communication; verbal and oral participation; and listening to stories. In the proposed amended complaint, Student provides greater specificity as to her social and mental health challenges, which she contends went unaddressed, and identifies additional IEP deficiencies, including a failure to provide individual services.

An order granting Student's motion to amend will result in a further continuance. While Student has filed her motion more than five days prior to the pending hearing, OAH must be mindful of the speedy resolution mandates of the Individuals with Disabilities Education Act in determining whether to grant the motion. Having considered the circumstances of this case, the undersigned finds the motion to amend timely and hereby grants Student's motion.

Although Panama-Buena Vista asks that OAH maintain the current hearing dates to prevent prejudice, absent an agreement by both parties, OAH must reset all dates upon granting a motion to amend. The parties are on notice that given the length of time this matter has been pending, OAH will not be inclined to grant a further continuance.

The amended complaint shall be deemed filed on the date of this order. All applicable timelines shall be reset as of the date of this order. OAH will issue a scheduling order with the new dates.

REQUEST FOR TELEPHONIC TESTIMONY

In light of this Order resetting hearing dates, Panama-Buena Vista's request for telephonic testimony is denied as moot.

IT IS SO ORDERED.

DocuSigned by:
Theresa Ravandi
180B9BDB98E5424...

Theresa Ravandi

Administrative Law Judge

Office of Administrative Hearings