BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. ACALANES UNION HIGH SCHOOL DISTRICT.	OAH Case No. 2018071294 ORDER GRANTING REQUEST FOR RECONSIDERATION AND GRANTING REQUEST TO CONTINUE DUE PROCESS HEARING; DENYING MOTION TO AMEND COMPLAINT AND DENYING REQUEST FOR SECOND MEDIATION DATE

On November 7, 2018, the undersigned administrative law judge issued an order that denied the joint request for a second mediation and continuance of due process hearing. On November 8, 2018 parties jointly filed a request for reconsideration. In the motion for reconsideration, parties renewed the request for continuance of the due process hearing asserting they planned to participate in IEP team meetings during November that likely would result in the need for an amended compliant to be filed. The parties, "stipulate to the filing of an Amended Complaint when the current IEP process is concluded." Finally, the parties requested a second mediation be scheduled because, "Counsel agree that further mediation in this matter would be an assistance to the parties following the completion of the IEP meetings and amendment of the Complaint in this matter." These are considered a motion for reconsideration of the continuance denial, a motion to amend a future filed complaint, and a motion to set a second mediation.

Reconsideration

The Office of Administrative Hearings will generally reconsider a ruling upon a showing of new or different facts, circumstances, or law justifying reconsideration, when the party seeks reconsideration within a reasonable period of time. (See, e.g., Gov. Code, § 11521; Code Civ. Proc., § 1008.) The party seeking reconsideration may also be required to provide an explanation for its failure to previously provide the different facts, circumstances or law. (See *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1199-1200.)

Parties provided additional facts in their November 8, 2018 joint request for reconsideration. Accordingly, reconsideration is GRANTED.

Motion to Continue

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. (See 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; and any other relevant fact or circumstance. (See Cal. Rules of Court, rule 3.1332(d).)

Here the parties identified several IEP team meetings that would not conclude prior to the originally scheduled prehearing conference hearing on November 16, 2018. The parties demonstrated good cause to continue the matter to complete the currently scheduled IEP team meetings. The parties requested to continue the matter to March, 2019. Good cause was not established for the length requested by the parties. All previously scheduled dates are vacated and the matter will be scheduled as set forth in the Order below.

Request to File First Amended Complaint

An amended complaint may be filed when either (a) the other party consents in writing and is given the opportunity to resolve the complaint through a resolution session, or (b) the hearing officer grants permission, provided the hearing officer may grant such permission at any time more than five (5) days prior to 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).)

While the parties purportedly stipulated to file an Amended Compliant, no such amended complaint was filed. Further, Student acknowledged that an amended complaint is only anticipated at this point. Accordingly, the motion is DENIED at this time without prejudice, as premature.

Request for Second Mediation

The IDEA and California law provide for mediation. OAH favors dispute resolution without the need to proceed to a due process hearing. Second mediations in the same case are not routinely granted and are done so only upon a showing of good cause. The parties have availed themselves of a mediation date on October 1, 2018. The parties indicate additional mediation dates "would be beneficial," but provide no additional facts or

circumstances were provided to warrant granting an additional mediation date. Thus, no additional mediation date is granted.

ORDER

1. The Motion for Reconsideration is Granted.

2. The Motion to Continue the due process hearing is GRANTED. The matter is now set as follows:

3. Prehearing Conference: December 7, 2018, at 1 PM
4. Due Process Hearing: December 18, 2018, at 9:30 AM, December 19-20, at 9 AM and continuing day to day thereafter as needed at the discretion of the Administrative Law Judge

5. Motion to File First Amended Complaint is DENIED without prejudice.

6. Motion for additional mediation date is DENIED.

IT IS SO ORDERED.

DATE: November 9, 2018

DocuSigned by:
Tiffany Gilmartin
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TIFFANY GILMARTIN
Administrative Law Judge
Office of Administrative Hearings