BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS OF:

PARENT ON BEHALF OF STUDENT,

and

ENTERPRISE ELEMENTARY SCHOOL DISTRICT,

OAH CASE NUMBER 2021040393

OAH CASE NUMBER 2021020664

# ORDER GRANTING MOTION TO AMEND COMPLAINT

MAY 19, 2021

On April 9, 2021, Student filed a due process hearing request, referred to as a complaint, with the Office of Administrative Hearings, naming Enterprise School District as respondent. The Office of Administrative Hearings is referred to as OAH. On April 15, 2021, OAH ordered the present case be consolidated with OAH case number 2021020664, designating this case as the primary case. On May 12, 2021, Student filed a motion to amend the due process hearing request and an amended complaint. Enterprise filed an opposition.

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).)

Enterprise opposes the motion to amend on several grounds. First, Enterprise cites the impending summer break as a prejudicial factor. Enterprise believes that if the motion to amend is granted, hearing will be reset to after summer break, when staff witnesses will be back at work. Enterprise's concern is that Student will not be receiving any services during this time. Any new hearing dates will be set according to applicable law, irrespective of school calendar. The parties may reach any necessary witnesses by subpoena.

Second, Enterprise opposes the substance of the amendments themselves. Specifically, Enterprise alleges that Student knew or should have known of the facts underlying Student's new issue two at the time of Student's initial filing. Enterprise also alleges that Student's new issue six is a result of parent's actions. Enterprise has not provided any authority to suggest that Student should be precluded from amending Student's complaint as a matter of law for any of the foregoing reasons.

Enterprise also alleges that Student's new issue six ("Whether [Enterprise], having received a full consent to its proposed assessment plan on March 1, 2021, has timely acted to complete the medical assessment agreed to by Luca's parent") is essentially the same as Student's issue four ("Whether [Enterprise], having conducted a health assessment of Luca January 30, 2020, had a right to conduct a second health assessment of him"). If anything, Student's issues four and six seem contradictory. But Enterprise has not provided any authority to suggest that Student should be precluded from amending Student's complaint as a matter of law.

The motion to amend was filed more than five days prior to the due process hearing. Therefore, it is timely and is granted. 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.

Student requested mediation in Student's amended complaint. Any request for mediation must be made jointly by the parties to OAH, and shall set forth mutually acceptable proposed dates for OAH's consideration. Student also requested that OAH provide the background and training of any assigned mediator and of the ALJ assigned to this matter. Information on OAH's ALJs may be found online at https://www.dgs.ca.gov/OAH/About/ALJ-Biographical-Information.

IT IS SO ORDERED.

Claire Yazigi

Claire Yazigi
Administrative Law Judge
Office of Administrative Hearings