BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2016070320
v.	ORDER GRANTING REQUEST FOR RECONSIDERATION AND AFFIRMING PRIOR ORDER SETTING NEW DATES
TORRANCE UNIFIED SCHOOL DISTRICT.	

On July 1, 2016, Student filed a due process hearing request (complaint) with the Office of Administrative Hearings, naming Torrance Unified School District. The original complaint consisted of two one-sentence issues regarding whether Student had been offered a free appropriate public education in the 2015-2016 school year, or offered a FAPE in the individualized education program of May 23, 2016, with two paragraphs of proposed resolutions. The due process hearing was scheduled to begin on November 1, 2016 pursuant to a joint request for continuance by the parties.

On September 26, 2016, Student filed a motion for leave to amend accompanied by a 30-page amended complaint, consisting of multiple issues with multiple subparts (Issues 1(A)-(C), 2(A)-(F), 3(A)-(C) and 4(A)-(F)), alleging a detailed series of procedural and substantive violations of the IDEA. Student requested that the currently scheduled dates remain on calendar regardless of the timelines being reset, because District did not mediate on the original complaint. District contended that dates must be reset, but did not otherwise oppose the amendment.

On October 4, 2016, the undersigned administrative law judge issued an order granting Student's motion for leave to amend, and denying Student's request that the dates scheduled for hearing remain unchanged despite the amendment.

Student filed a reply after the OAH order was already issued.

Student's reply is accompanied by the sworn declaration of Student's parent that she is scheduled to undergo surgery on November 22, 2016, and will be on restrictions afterwards for four weeks. Parent also states that it is a financial hardship for Student's family to continue to privately pay for the educational program that they hope District will be required to fund if Student prevails at hearing.

On October 6, 2016, Student filed a request for reconsideration, based upon the reply papers filed after the motion had been decided.

APPLICABLE LAW

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.)

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).)

A hearing cannot take place until a resolution session is held, or both parties waive a resolution session in writing or agree to mediate instead. (20 U.S.C. § 1415(f)(1)(B)(i)(I); 34 C.F.R. § 300.510(b)(3).)

DISCUSSION

Reconsideration is granted to consider the arguments Student raised in the reply that was filed after the October 4, 2016 Order issued. On reconsideration, the request to maintain the pre-amendment dates is again denied, and the prior Order affirmed.

Approximately one month prior to the scheduled hearing, Student chose to greatly expand the issues presented. Whether or not District chose to mediate the two issues in the original complaint, it is entitled to an opportunity to meet and informally resolve the 18 issues presented by the new complaint. (34 C.F.R. § 300.510(a)(2).) More importantly, a hearing *cannot* take place until a resolution session is held, or both parties waive a resolution session in writing or agree to mediate instead. (20 U.S.C. § 1415(f)(1)(B)(i)(I); 34 C.F.R. § 300.510(b)(3).)

Parents' financial hardship during the delay caused by the filing of the amended complaint is not persuasive grounds to dispense with the assignment of new dates when restarting the applicable timelines. Parents who fund a private placement during the pendency of due process proceedings do so at their own financial risk. (*Florence County Sch. Dist. v. Carter* (1993) 510 U.S. 7, 15; 114 S.Ct. 361.)

To the extent Parent may require reasonable post-surgery accommodations to participate in the rescheduled mediation or hearing, Parent may contact the assigned calendar staff, identified in the scheduling order, at (916) 263-0880, as soon as the need is known.

Additional information concerning requests for reasonable accommodation is available on OAH's website at: http://www.dgs.ca.gov/oah/Home/Accessibility.aspx.

ORDER

Student's motion for reconsideration is granted. On reconsideration, the prior Order, dated October 4, 2016, on Student's motion for leave to amend is affirmed.

DATE: October 13, 2016

DocuSigned by:
Alexa Hohensee
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ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings