BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

SAN DIEGO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021050118

AMENDED ORDER FOLLOWING PREHEARING CONFERENCE

JUNE 29, 2021

On June 21, 2021, Administrative Law Judge Charles Marson, Office of Administrative Hearings, called OAH, held a telephonic prehearing conference. The Administrative Law Judge will be referred to as an ALJ. The prehearing conference will be referred to as a PHC. On June 24, 2021, OAH issued an order following PHC. On June 24, 2021, Student filed a request to amend the order following PHC, specifically, to correct and reword the issues. On June 28, San Diego Unified School District filed a motion to continue this matter based on San Diego's Counsel's need for more time to prepare for hearing due to Counsel's inability to access case information due to her recent change in her employment with a different law firm. On June 29, 2021, Student filed an opposition.

On June 29, 2021, ALJ Rita Defilippis convened the first day of hearing in this matter. Based upon discussion with the parties, the ALJ issues the following amended order following prehearing conference.

REQUEST FOR CONTINUANCE

The parties were given an opportunity to orally make and respond to San Diego's pending motion to continue. San Diego's Counsel terminated her employment with Dannis, Woliver Kelly, on Thursday, June 24, 2021, and began her employment with a new law firm, Orbach Huff and Henderson, effective June 28, 2021. Counsel contends that she was denied access to case files in this matter upon her termination of employment, until June 28, 2021, when her prior law firm released the case file. Student opposed the request for continuance due to Counsel's failure to timely inform Student of Counsel's claimed inability to prepare for hearing, and ongoing communications, up to the day before hearing, between Student's Counsel and an attorney from Dannis, Wolliver, Kelly, regarding case negotiations and witnesses, wherein no information was provided to Student regarding a change in the law firm representing San Diego.

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. (Ed. Code, § 56505, subd. (f)(3); 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 or imposing conditions on the continuance; and any other relevant fact or circumstance. (Cal. Rules of Court, rule 3.1332(d).)

The motion for continuance was not filed three days before the PHC. Good cause was established for the late filing due to the recent sequence of events resulting in San Diego's Counsel's delay in receiving Student's case file from her prior law firm. San Diego did not establish good cause for a continuance of hearing. However, a brief delay was granted to allow San Diego's Counsel to prepare for the next day of hearing. Following a discussion clarifying the issues for hearing, the matter was continued to June 30, 2021, at 9:30 am.

ISSUES FOR HEARING

The issues were discussed at length on the first day of hearing. Based on the discussion, the issues at the due process hearing are as follows:

1. Did San Diego deny Student a free appropriate public education, called a FAPE, in the 2019-2020 school year by:
    a. failing to assess Student in all areas of suspected disability, specifically by failing to conduct a music therapy assessment, following Parents' April 23, 2020 request;

b. failing to timely respond to Parents' concerns regarding the ineffectiveness of Student's distance learning plan; the failure to implement Student's speech and language, occupational therapy, physical therapy, and adapted physical education related services; and Student's lack of exposure to Student's nondisabled peers;

c. failing to implement Student's February 19, 2021 individualized education program, called an IEP, specifically, Student's speech and language, occupational therapy, physical therapy, and adapted physical education related services; the provision of a working communication device; and Student's exposure to Student's nondisabled peers;

d. failing to consider a continuum of placement options at Student's June 8, 2020 IEP team meeting;

e. failing to make a clear and specific offer of a FAPE in Student's February 19, 2020 IEP?

2. Did San Diego deny Student a FAPE during the 2020-2021 school year, up to May 3, 2021, by:

a. failing to assess Student in all areas of suspected disability, specifically by failing to conduct a music therapy assessment;

b. failing to timely respond to Parents' September 8, 2020 expressed concerns regarding the ineffectiveness of Student's distance learning plan; the failure to provide Student's speech and language, occupational therapy, physical therapy, and adapted physical education related services; and Student's defective communication device;

c. failing to provide prior written notice in response to Parents' February 27, 2021 requests for applied behavior analysis services, compensatory education services, and changes to Student's individual health safety plan;
d. failing to implement Student's speech and language, occupational therapy, physical therapy, and adapted physical education related services, and provision of a working communication device, pursuant to Student's February 19, 2020 and February 17, 2021 IEP's;
e. failing to offer applied behavior analysis services, an aide trained in applied behavior analysis, and sufficient instruction by a credentialed teacher;
f. failing to provide Student with instruction by a credentialed teacher, as required by Student's February 17, 2021 IEP;
g. failing to provide speech and language services at a time Student was available to participate;
h. failing to provide appropriate services, specifically by insisting on physical barriers and physical distancing and isolation of Student from his peers upon his return to in-person instruction;
i. failing to develop pragmatic language IEP goals;
j. failing to offer appropriate supports and assessments to facilitate Student's goal for wearing a Covid-19 related facial mask;
k. preventing Parent's meaningful participation in the February 17, 2021 IEP team meeting, and addendum IEP team meetings, by

refusing to consider and discuss Parents' requested changes to Student's individual health safety plan;

l. failing to include someone with the authority to make changes to Student's individual health safety plan on Student's February 17, 2021 IEP team;

m. making the implementation of Student's IEP contingent upon agreeing to all aspects of the IEP, including Student's individual health safety plan;

n. failing to provide accommodations and modifications to facilitate Student's instruction in a classroom with peers, including those with and without disabilities; and

o. predetermining Student's placement, specifically by predetermining the contents of Student's individual health safety plan.

Any disagreement regarding the accuracy of the issues, as stated, will be addressed at hearing.

IT IS SO ORDERED.
Rita Defilippis

Rita Defilippis
Administrative Law Judge
Office of Administrative Hearings