BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

WILLIAM S. HART UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2021110193

ORDER DENYING MOTION TO AMEND AND FOR EXPEDITED HEARING

APRIL 19, 2022

On November 5, 2021, Student filed with the Office of Administrative Hearings, referred to as OAH, a request for due process hearing naming William S. Hart Union School District. At a prehearing conference held on December 20, 2021, OAH granted Student's motion to amend the complaint. On January 25, 2022, OAH granted the parties' joint request to continue the matter to scheduled hearing dates of March 22-24, 2022, to enable them to participate in mediation on February 8, 2022. On March 8, 2022, the parties jointly filed a request to continue based upon their need for a second mediation due to changes in Student's circumstances and other matters outside the parties' control. OAH granted the motion and set the matter for the currently scheduled hearing dates of May 10-12, 2022. On April 13, 2022, Student filed a request to file a second amended complaint and to

delineate one of the issues as being subject to an expedited hearing. On April 15, 2022, William S. Hart opposed. As discussed below, the motion is denied. The matter will proceed on the currently scheduled dates.

MOTION FOR AN EXPEDITED HEARING

A parent of a child with a disability who disagrees with any decision by a school district regarding a change in educational placement of the child based upon a violation of a code of student conduct, or who disagrees with a manifestation determination made by the district, may request and is entitled to receive an expedited due process hearing. (20 U.S.C. § 1415(k)(3)(A); 34 C.F.R. § 300.532(a) (2006.) An expedited due process hearing before OAH must occur within 20 school days of the date the complaint requesting the hearing is filed. (20 U.S.C. § 1415(k)(4)(B); 34 C.F.R. § 300.532(c)(2)(2006).)

Here, despite Student's attempt to categorize her allegations as such, there is no issue alleged that is subject to an expedited hearing. Although Student's placement may have changed, it was not alleged to have been due to a violation of a code of student conduct. Nor is there an appeal due to a disagreement with a manifestation determination. No expedited issues were alleged in the complaint. Thus, the provisions of Section 1415(k)(4)(B) for an expedited hearing do not apply. Accordingly, Student's request for an expedited hearing is denied.

MOTION TO AMEND

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 due process hearing must be conducted, and a decision rendered within 45 days of receipt of the complaint unless an extension is granted. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Speedy resolution of the due process hearing is mandated by law and continuance of the hearing may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f)(3).)

This matter has been pending since November 2021. It has been amended once and continued twice, because of changes in Student's circumstances that could, theoretically, continue to change and evolve, always resulting in contentions that the matter should not yet go to hearing. However, federal regulations specify that OAH "must ensure" the issuance of a decision following a due process hearing just 45 days after the resolution period ends. (34 C.F.R. § 300.515, subsection (a)). The only exception to the 45-day timeline is set forth in subsection (c), which empowers specific extensions of time for good cause, of which two have already been granted here. If a party amends with each change of circumstances, a due process hearing can be delayed for years, undermining IDEA's public policy of expeditious and timely resolution of disputes. If OAH permits the filing of this second amended complaint, a new scheduling order would issue setting a hearing in June 2022, more than seven months since the initial filing of Student's complaint. Such delay is unacceptable. Nothing prevents Student from filing additional due process hearing requests to address subsequent events that may have recently transpired. Therefore, Student's motion to file an amended complaint is denied.

ORDER

1. The motion to expedite this matter is denied.
2. The motion to amend is denied.

IT IS SO ORDERED.

June Lehrman

June Lehrman

Administrative Law Judge

Office of Administrative Hearings