BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LONG BEACH UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018081089 ORDER GRANTING MOTION TO AMEND COMPLAINTAND DENYING REQUEST TO AMEND HEARING DATES

On August 27, 2018, Student filed a Due Process Hearing Request (complaint) with the Office of Administrative Hearings, naming Long Beach Unified School District. On March 28, 2019, Student filed a Motion to Amend the Due Process Hearing Request (amended complaint), seeking to: amend the prior complaint; allow the amended complaint to relate back to the original filing date; and set the matter for hearing on May 21, 22, and 23, 2019. Long Beach filed an opposition on April 3, 2019, arguing against any relation back as contrary to the two-year statute of limitations applicable to cases under the Individuals with Disabilities Education Act, and opposing the new hearing dates proposed by Student. Student filed a reply on April 4, 2019.

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).) Here, Student's request to amend the complaint was timely filed.

If an amendment is sought after the statute of limitations has run, the amended complaint will be deemed filed as of the date of the original complaint provided recovery is sought in both pleadings on the same general set of facts. *Austin v. Massachusetts Bonding & Insurance Co.* (1961) 56 Cal.2d 596, 600; *Grudt v. City of Los Angeles* (1970) 2 Cal.3d 575. Cases applying this relation back rule have made it clear that "it is the sameness of the facts rather than the rights or obligations arising from those facts that is determinative. [Citation.]" *Lamont v. Wolfe* (1983) 142 Cal.App.3d 375, 378. Here, Student's amended complaint is based upon the same general set of facts related to Student's ongoing issues with assessment, behavior, and behavioral support, and as such, relates back to the original filing date in keeping with the authority cited above.

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, Student's amended complaint restarts the dates and requires a new scheduling order which allows for a resolution session, and resets all dates. Student's request to set the hearing of the amended due process case for May 21-23, 2019 was effectively a request to continue dates contained in a Scheduling Order that has not issued. As such, Student's request to continue the dates of the hearing is denied without prejudice.

The motion to amend 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 in keeping with its standard practice.

IT IS SO ORDERED.

DATE: April 05, 2019

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Ted Mann
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TED MANN
Administrative Law Judge
Office of Administrative Hearings