BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: OAKLAND UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017030950
PARENT ON BEHALF OF STUDENT, v. OAKLAND UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017050146 ORDER GRANTING MOTION TO AMEND; IDENTIFYING CASE AS DUAL; MAINTAINING CONSOLIDATION; DESIGNATING DISTRICT CASE AS LEAD CASE; AND CONTINUING NON-EXPEDITED DATES

On March 16, 2017, Oakland Unified School District filed a Due Process Hearing Request (complaint) with the Office of Administrative Hearings, naming Student. On April 28, 2017, Student filed a complaint naming Oakland and Aspire College Academy.[1] On May 26, 2017, OAH granted Oakland's motion to consolidate the two matters. The consolidated matter is currently scheduled for hearing beginning September 12, 2017.

On June 19, 2017, Oakland filed a Motion to Amend along with a proposed amended complaint. No opposition was received from Student.

APPLICABLE LAW AND DISCUSSION

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

[1] At Student's request, OAH dismissed Aspire as a party on June 7, 2017.

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).)

Oakland seeks to amend its complaint to add one additional claim, namely, whether Student's behaviors are likely to result in injury to herself or to others such that Oakland may remove Student to an interim alternative educational setting. Oakland's motion to amend is timely and is granted.

Expedited Hearing Process

A school district that believes that maintaining a child in his or her current placement is substantially likely to result in injury to the child or others, has the right to request and receive an expedited due process hearing. (20 U.S.C. § 1415(k)(3)(A); 34 C.F.R. § 300.532(a) (2006).) If it is determined that maintaining the current placement of the student is substantially likely to result in injury to the student or to others, the administrative law judge may order a change in placement to an appropriate interim alternative educational setting for not more than 45 school days. (20 U.S.C. § 1415(k)(3)(B)(ii)(II); 34 C.F.R. § 300.532(b)(2)(ii).) 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).)

Oakland's amended complaint raises the issue of whether it may place Student in an interim alternative educational setting due to her behaviors. This is an expedited issue which requires that this matter now be calendared as a dual matter with both expedited and non-expedited dates.

Consolidation

Although no statute or regulation specifically provides a standard to be applied in deciding a motion to consolidate special education cases, OAH will generally consolidate matters that involve: a common question of law and/or fact; the same parties; and when consolidation of the matters furthers the interests of judicial economy by saving time or preventing inconsistent rulings. (See Gov. Code, § 11507.3, subd. (a) [administrative proceedings may be consolidated if they involve a common question of law or fact]; Code of Civ. Proc., § 1048, subd. (a) [same applies to civil cases].)

Oakland's amended complaint includes it original two issues, namely, whether its November 216 psychoeducational assessment of Student was appropriate such that Student is not entitled to an independent educational evaluation, and whether the December 2016 IEP offers Student a free appropriate public education in the least restrictive environment. As specified in the May 26, 2017 Order Granting Consolidation, Student's complaint raises similar issues including, but not limited to, whether Oakland denied Student a FAPE during the 2016-2017 school year by failing to provide an independent evaluation and failing to offer an appropriate program that addressed her academic and behavior needs. As such, the

two cases continue to involve common questions of law and fact, and consolidation remains appropriate for the reasons specified in the May 2017 Order.

When consolidating cases, OAH designates the statutory timelines applicable to the consolidated matters to be controlled by one of the cases. Here, the statutory timelines shall be controlled by Oakland's amended complaint.

Continuance of Non-Expedited Hearing Dates

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. (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).) In ruling upon a motion for continuance, OAH is guided by the provisions found within the Administrative Procedure Act and the California Rules of Court that concern motions to continue. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, rule 3.1332.) Generally, continuances of matters are disfavored. (Cal. Rules of Court, rule 3.1332(c).)

Having granted Oakland's motion to amend and maintained consolidation, all applicable timelines shall be reset as of the date of this order, with Oakland's expedited issue proceeding to hearing on the expedited timelines. However, on June 12, 2017, the undersigned ALJ found good cause to grant Student's request to continue the hearing dates. The undersigned determined that continuing the matter to September 2017 was warranted based on: Oakland's failure to timely provide Student with all requested education records; the fact that Student received some records as recently as June 1, 2017; and the inability of the parties to schedule in-class observations of Student by her identified experts prior to the close of the 2016-2017 school year. Having found good cause to continue the hearing to September 2017, Oakland's decision to amend its complaint will not operate to advance the hearing dates for the non-expedited issues. As such, the prehearing conference and hearing dates for the non-expedited matter are continued to the dates previously calendared, and the parties will be afforded a further mediation date as specified below.

ORDER

1. Oakland's motion to amend is granted. The amended complaint shall be deemed filed on the date of this order.

2. OAH will issue a dual scheduling order with expedited dates and non-expedited dates as determined herein.

3. The dates for the consolidated non-expedited matter are continued. Mediation in the non-expedited matter is calendared for August 10, 2017, at 9:30 a.m.; the prehearing conference shall be held on September 1, 2017, at 10:00 a.m.; and the due process hearing

will be held on September 12, 2017, at 9:30 a.m., September 13-14, 2017, at 9:00 a.m., and continuing day to day, Monday through Thursday, at the discretion of the ALJ.

4. This matter shall remain consolidated. The 45-day timeline for issuance of the decision regarding the non-expedited issues in this consolidated case shall be based on the date of the filing of the amended complaint in Oakland's Case, OAH Case Number 2017030950.

IT IS SO ORDERED.

DATE: June 23, 2017

DocuSigned by:
Theresa Ravandi
180B9BDB98E5424...

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings