

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

REDWOOD CITY ELEMENTARY
SCHOOL DISTRICT.

OAH CASE NO. 2012051055

ORDER FOLLOWING PREHEARING
CONFERENCE, AND CONTINUING
AND SETTING DATES FOR
MEDIATION, PREHEARING
CONFERENCE AND DUE PROCESS
HEARING

On January 7, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Peter Paul Castillo, Office of Administrative Hearings (OAH). F. Richard Ruderman, Attorney at Law, appeared on behalf of Student. Claire A. Cunningham, Attorney at Law, appeared on behalf of the Redwood City Elementary School District (District). The PHC was recorded.

Based on discussion with the parties, the ALJ issues the following order:

1. Motion for Reconsideration and Motion to Amend. On December 28, 2012, Student filed a Motion to Amend the Due Process Hearing Request (amended complaint) to include new allegations that occurred after the filing of the original complaint. On January 2, 2013, the District filed an opposition. On January 3, 2012, the undersigned administrative law judge issued a ruling that denied Student's motion to amend.

On January 7, 2012, at the PHC, Student made a motion for reconsideration as to the January 3, 2012 order.¹ The District did not oppose the request.

OAH 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.)

¹ On January 7, 2013, Student filed motions to recuse the undersigned administrative law judge for cause and for reconsideration of the January 3, 2013 order. Student withdrew both motions without prejudice at the PHC and the District did not object.

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).)² The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. §1415(c)(2)(E)(ii).)

The Student alleged new facts in support of the motion for reconsideration; namely, that the District subsequently consented to the amended complaint after the January 3, 2013 order. Therefore, Student established new facts and circumstances that warrant the granting of the motion for reconsideration.

The motion to amend the complaint is timely because the due process hearing date is set more than five days from the date the motion to amend was filed, and the District does not oppose Student's request. The proposed amended complaint includes new allegations regarding the District's purported failure to hold an annual individualized educational program (IEP) team meeting in October 2012, and the existence of a December 20, 2012 parental notice to the District that Student was changing unilateral private placements. Because the motion to amend was timely filed and the District does not oppose Student's request, the motion to amend is granted. Accordingly, the amended complaint shall be deemed filed on the date of this order. All applicable timelines are reset as of the date of this order, as set forth below

2. Parties' Continuance Request. At the PHC, the parties waived on the record the resolution session³ to proceed directly to the mediation process. The parties requested a continuance to obtain requested dates for a hearing to avoid scheduling conflicts. 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) (2006); 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).) The parties established good cause for a continuance based on preexisting scheduling conflicts.

Therefore, the PHC and the due process hearing are continued. The mediation shall take place at 9:30 a.m. on January 15, 2013. The PHC shall take place on March 11, 2013, at 10:00 a.m., and the due process hearing shall take place on March 18 - 21, 2012. The hearing shall begin at 9:00 a.m. and end at 5:00 p.m., except for March 18, 2012, on which

² All statutory citations are to title 20 United States Code unless otherwise indicated.

³ 34 C.F.R. § 300.510(a)(3) (2006).

day the hearing shall start at 1:30 p.m., unless otherwise ordered. The hearing shall take place at the District's offices, located at 750 Bradford Street, Redwood City, CA 94063.⁴

IT IS SO ORDERED.

Dated: January 8, 2013

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings

⁴ At a minimum for the hearing, the room shall have separate tables capable of being moved into a courtroom configuration, as follows: (1) one table for Student's representatives; (2) one table for the District's representatives; (3) one table for the ALJ with a nearby electrical outlet; and (4) one witness table. The District shall ensure that all parties and the ALJ have drinking water available to them.