

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PAJARO VALLEY UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2013090347

ORDER FOLLOWING PREHEARING
CONFERENCE AND GRANTING
MOTIONS TO FILE A SECOND
AMENDED COMPLAINT AND TO
CONTINUE DUE PROCESS HEARING
ON SECOND AMENDED
COMPLAINT

On May 2, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Charles Marson, Office of Administrative Hearings (OAH). Susan Foley, Attorney at Law, appeared on behalf of Student. Laurie E. Reynolds, Attorney at Law, appeared on behalf of the Pajaro Valley Unified School District (Pajaro Valley). The PHC was recorded.

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

1. Leave to File Second Amended Complaint. At the outset of the PHC, Pajaro Valley represented it had no opposition to Student's Motion to File a Second Amended Complaint, which was filed on May 1, 2014. Student's motion asserts that Student wishes to amend her complaint to set forth claims related to individualized education program meetings and offers on March 25 and April 25, 2014.

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).)

The motion to file a second amended complaint is timely, is unopposed, and is conditionally granted. OAH does not accept amendments or supplements to complaints; it requires a single unitary amended complaint that sets forth all of the pleader's allegations in one document and supercedes and replaces all previous complaints and amendments on file. Student's proposed second amended complaint is not in proper form.

Student's Motion to File a Second Amended Complaint is therefore granted on the condition that, on or before May 6, 2014, Student shall file a single, unitary second amended complaint setting forth all her allegations and fully superceding and replacing all previous complaints and amendments. If Student timely files such a second amended complaint, the due process hearing on the second amended complaint shall be scheduled as set forth in section 2, below. Until such a second amended complaint is timely filed, the due process hearing date of May 8, 2014 shall remain on calendar and is confirmed.

If Student does not timely file a second amended complaint as described above, then this matter will proceed to hearing on May 8, 2014, as presently scheduled, on the allegations of the First Amended Complaint. The PHC shall be held at the outset of the hearing on May 8, 2014.

2. Joint Request for Continuance of Hearing on Second Amended Complaint. Assuming that Student timely files a second amended complaint as required above, OAH would normally issue a new Scheduling Order. Rather than wait for that Order, the parties have agreed upon August 26, 27, and 28, 2014, for the hearing on the second amended complaint. Their request that the hearing be calendared on those dates constitutes a request for continuance, which the parties represent is necessary because certain specific witnesses needed by both parties will be unavailable between the end of the current academic year and the beginning of the next academic year.

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).)

Assuming that Student timely files a second amended complaint as required in section 1, above, all dates now calendared in this matter will be vacated and the due process hearing on the second amended complaint will be set as follows:

Prehearing Conference:	August 18, 2014, at 10:00 AM
Due Process Hearing:	August 26, 27, and 28, 2014, at 9:30 AM on each

day, and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.

3. All Other Matters Deferred to Later PHC. All other matters are deferred to the PHC on May 8, 2014, if Student does not timely file a second amended complaint; or to the PHC on August 18, 2014, if Student does timely file a second amended complaint.

IT IS SO ORDERED.

DATE: May 2, 2014

/s/

CHARLES MARSON
Administrative Law Judge
Office of Administrative Hearings