

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

STOCKTON UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2014100227

ORDER FOLLOWING PREHEARING
CONFERENCE DENYING MOTION
TO AMEND COMPLAINT AND
GRANTING MOTION TO CONTINUE

On November 24, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge B. Andrea Miles, Office of Administrative Hearings. Attorney Diane Beall represented the Stockton Unified School District. Attorney Debra Wright represented Student's father on behalf of Student. The PHC was recorded.

Based on discussion with the parties and Student's written motion, the following order is issued:

1. Motion to Amend the Complaint: Student filed an amended request for due process hearing on November 18, 2014. The original complaint in this matter was filed October 6, 2014. Although the amended request was not accompanied by a motion to amend or any points and authorities, this filing was interpreted by OAH to be a motion to amend the complaint. Stockton did not file an opposition to the motion to amend and did not object to Student's motion at the PHC. Student's motion to amend was denied at the PHC on the basis that the amended complaint did not contain any substantive changes.

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).)

In determining whether a party should be allowed to file an amended complaint, the Administrative Law Judge must determine whether the moving party has provided good cause for filing the amendment. In the case at hand, the amended complaint does not include any substantive changes. A line-by-line comparison of the two pleadings reveals that the only change made to the amended complaint was the addition of Student's mother's name and contact information. At the PHC, Student's attorney explained that it had been recently

discovered that Father was mistaken in his belief that he had sole legal custody of Student, and as such, Mother and Father jointly held Student's educational rights. Neither Student nor Stockton presented any evidence or supplied any information regarding whether Mother had any interest or desire in joining the current case. Both parties indicated that they had not had any contact with Mother regarding this case. As this case involves Student's educational rights, the addition of a parent to the case does not constitute a substantive change to the complaint. Therefore, this type of change does not constitute good cause to amend a complaint. As Student has failed to demonstrate good cause for the filing of an amended complaint, Student's motion to amend the complaint is denied.

2. Motion for Continuance: After Student's motion to amend was denied, the parties made a joint oral motion for continuance of the PHC and the due process hearing on the basis that the parties wanted an opportunity for Mother to be involved in the process and the opportunity to mediate the case. This matter is set for hearing on December 2, 2014 and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge. There have been no previous requests for a continuance.

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).)

The parties have established good cause to continue the hearing and the motion is granted. All dates are vacated. This matter will be set as follows:

Telephonic PHC:

Date: March 6, 2015

Time: 10:00 AM

Due Process Hearing:

Date: March 17, 2015 through March 19, 2015

The hearing shall continue day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.

Time: 9:30 AM on March 17, 2015 and 9:00 AM each day thereafter.

Place: Stockton Unified School District

1800 South Sutter Street

Stockton, CA 95206

3. Scheduling of Mediation: The parties requested that a mediation date be set as soon as possible. Parties request was granted and the new mediation date will be set as follows:

Date: January 20, 2015

Time: 9:30 AM

Place: Stockton Unified School District
1800 South Sutter Street
Stockton, CA 95206

4. Notice to Witnesses: The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure that the witnesses will be available to testify. A witness will not be regarded as unavailable for purposes of showing good cause to continue the hearing if the witness is not properly notified of the hearing date or properly subpoenaed, as applicable.

5. Other Matters: All other matters relevant to preparing for hearing, including clarification of issues and identification of witnesses and exhibits, will be addressed at the PHC on March 6, 2015.

6. Settlement: Dates for hearing will not be cancelled until a letter of withdrawal, or a request for dismissal and the signature page of the signed agreement has been received by OAH. If an agreement in principle is reached, the parties should plan to attend the scheduled hearing unless different arrangements have been agreed upon by the assigned ALJ.

IT IS SO ORDERED.

Dated: November 24, 2014

/s/

B. ANDREA MILES

Administrative Law Judge

Office of Administrative Hearings