

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ELK GROVE UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2014070177

ORDER DENYING MOTION TO
AMEND COMPLAINT

On June 27, 2014, Parent on behalf of Student filed a Due Process Hearing Request (complaint), naming the Elk Grove Unified School District as respondent. On October 24, 2014, Student filed a Motion to Amend the Due Process Hearing Request. Elk Grove filed an opposition on October 29, 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).)¹ The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. §1415(c)(2)(E)(ii).)

Student's complaint alleges two issues relating to Elk Grove's termination of its contract with a non-public agency, CARD, to provide behavior aide services for Student. Student desires to file an amended complaint to add an issue that Elk Grove failed to implement a stay put order from OAH requiring it to provide Student a CARD aide between July 8, 2014 and July 16, 2014.

In its opposition, Elk Grove contends that Student is untimely in making this request as it had knowledge of this new issue for in excess of three months before finally making this motion.

The original scheduling order set the due process hearing on August 26, 2014. On August 5, 2014, the parties jointly requested that the hearing be continued to November 18, 2014. OAH granted this request on August 6, 2014. Student has had more than sufficient time to seek to amend the complaint to add the proposed new issue during this time period.

¹ All statutory citations are to title 20 United States Code unless otherwise indicated.

Here, the effect of Student's motion is to have OAH continue the due process hearing. The parties have had one continuance, plus Student had more than adequate time to amend her complaint as she had notice of the proposed new issue over three months ago. The effect of granting Student's motion would deny Elk Grove to have a timely hearing. Elk Grove would be prejudiced as it would be required to continue to provide stay put services with a non-public agency it would not normally use.

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).) The Office of Administrative Hearings 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 appears to be using this motion as a means to postpone the upcoming hearing so as to keep in place her preferred non-public agency. Thus, good cause has not been demonstrated to continue this matter any further.

Student's motion to file an amended complaint is DENIED.

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IT IS SO ORDERED.

DATE: November 6, 2014

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings