

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

OAH Case No. 2014041152

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT, and SIMI VALLEY UNIFIED
SCHOOL DISTRICT,

OAH Case No. 2014070148

LOS ANGELES UNIFIED SCHOOL
DISTRICT,

ORDER DENYING STUDENT'S
MOTION TO AMEND COMPLAINT
AND DENYING DISTRICT'S MOTION
TO AMEND COMPLAINT

v.

PARENT ON BEHALF OF STUDENT.

On April 28, 2014, Student filed a Due Process Hearing Request (complaint), naming Los Angeles Unified School District (Los Angeles). On June 3, 2014, OAH granted the parties' first joint request for continuance. On June 27, 2014, Los Angeles filed a Request for Due Process Hearing in OAH case number 2014070148. The matters were consolidated on July 11, 2014, and the consolidated cases were scheduled for hearing on the dates set in Student's case.

On July 15, 2014, Student filed a motion to amend his complaint to name Simi Valley Unified School District (Simi Valley), and California Department of Education (CDE). On July 18, 2014, OAH granted Student's motion to amend his complaint. On July 18, 2014, Los Angeles moved to amend its complaint in the consolidated matters. OAH granted Los Angeles' motion to amend on July 25, 2014, and issued a scheduling order setting a due process hearing in the consolidated matter for September 11, 2014. OAH dismissed CDE on August 4, 2014.

On August 26, 2014, OAH granted the parties' joint request for continuance. The parties requested a continuance of eight weeks in order to try to resolve the matter by settlement. If the matter did not settle, the parties agreed to hold a PHC on November 10, 2014, and a due process hearing on November 17-21, 2014. OAH granted the request on August 26, 2014, set a PHC November 10, 2014 at 1:00 p.m., and a due process hearing

November 17, 18, 19, and 20, 2014 and continuing day to day at the discretion of the ALJ. The Order states “**No further continuances without a showing of substantial good cause.**”

On November 3, 2014, Los Angeles filed a request to file a second amended complaint. On November 4, 2014, Student filed a motion to amend Student’s complaint and a proposed second amended complaint. Student filed a non-opposition to Los Angeles’ motion. At issue in both Student’s second amended complaint and Los Angeles’ second amended complaint is an IEP team meeting held on October 21, 2014, and whether an IEP dated October 22, 2014, offered Student a FAPE.

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).)

Student’s case has been pending since April 28, 2014. District’s case has been pending since June 27, 2014. The parties have each amended once, and have obtained two continuances. 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.) In this case, Student filed a non-opposition to Los Angeles’ request to amend but Los Angeles has not taken a position on Student’s request. To the contrary, Los Angeles has filed a PHC statement including witness and exhibit lists. To find that Los Angeles may file a second amended complaint because Student has submitted written non-opposition but Student may not because Los Angeles has not agreed to Student’s amendment in writing gives an unfair advantage to Los Angeles. Furthermore, absent written consent, OAH has discretion to grant the motions at any time more than five (5) days prior to the due process hearing. To amend the complaints at this time based on new claims unrelated to the pending claims, would result in delaying the hearing on claims that are nearly six months old. The parties have not established “substantial good cause” for vacating all dates on those claims, and setting timelines that would further delay hearing in the pending claims. Both motions to amend are denied. The consolidated matters shall proceed on the dates scheduled.

IT IS SO ORDERED.

DATE: November 7, 2014

/s/

MARIAN H. TULLY
Administrative Law Judge
Office of Administrative Hearings

