

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2015050410
v.	
SAN MARCOS UNIFIED SCHOOL DISTRICT,	
SAN MARCOS UNIFIED SCHOOL DISTRICT	OAH Case No. 2015050399
v.	ORDER FOLLOWING PREHEARING CONFERENCE; ORDER GRANTING STUDENT'S MOTION TO AMEND COMPLAINT; ORDER GRANTING CONTINUANCE OF PREHEARING CONFERENCE AND DUE PROCESS HEARING
PARENT ON BEHALF OF STUDENT.	

On September 4, 2015, a telephonic prehearing conference was held before Administrative Law Judge Darrell Lepkowsky, Office of Administrative Hearings. Meagan Nunez, Attorney at Law, appeared on behalf of Student. Jonathan Read, Attorney at Law, appeared on behalf of the San Marcos Unified School District. Mr. Read was joined by law clerk Sarah Orloff.

On September 2, 2015, Student filed a motion to amend his due process complaint, originally filed on May 8, 2015. District filed an opposition to the motion to amend on September 2, 2015. On September 4, 2015, Student filed a response to District's opposition.

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).)

The motion to amend is timely and is granted. The amended complaint shall be deemed filed on the date of this order. All applicable timelines shall be reset as of the date of this order.

Based on scheduling conflicts, District requested a brief continuance in the prehearing conference and due process hearing on Student's amended complaint. Student did not oppose the request for the short 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 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).)

District demonstrated good cause for its requested continuance due to pre-existing conflicts of District's counsel. The request for a brief continuance is therefore granted. This matter shall be set as follows:

Prehearing Conference: November 2, 2015, at 3:00 p.m.²

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

² The parties had originally requested October 26, 2015, as the date for the prehearing conference. However, OAH will be dark that day for training. The attorneys for both parties have another hearing the week of November 2, 2015, in OAH case number 2015070894. However, that hearing is not scheduled to start until November 3, 2015.

Due Process Hearing: November 9 – 12, 2015, beginning at 1:30 p.m. on November 9, 2015, and at 9:00 a.m. all other days, and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.³

IT IS SO ORDERED.

DATE: September 4, 2015

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings

³ The hearing will be dark on November 11, 2015, for the Veteran's Day holiday.