

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SCOTTS VALLEY UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015060440

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

On October 16, 2015, a telephonic prehearing conference was held before Administrative Law Judge B. Andrea Miles, Office of Administrative Hearings. Mandy Leigh, Attorney at Law, appeared on behalf of Student. Nathan Sullivan, Attorney at Law, Law, who also represents Student, observed the prehearing conference. Jennifer Nix, Attorney at Law, appeared on behalf of Scotts Valley Unified School District. The PHC was recorded.

Based upon the parties' written motions and discussion with the parties at the PHC, the ALJ issues the following order:

1. Motion to Dismiss. On September 25, 2015, Scotts Valley filed a Motion to Dismiss, alleging that the complaint should be dismissed because Parent lacked standing to pursue the complaint because Student had turned 18 and Parent had not filed any documentation with OAH indicting that she had Student's permission to represent Student or that Student had assigned his education rights to Parent.

On October 5, 2015, OAH ordered Parent to file a document signed by Student, indicating either that Student had provided Parent permission to represent Student in this matter or that Student had assigned his educational rights to Parent by close of business on October 12, 2015 or that OAH would entertain dismissing this case.

On October 6, 2015, Parent complied with OAH's order by filing an Assignment of Educational Decision-Making Authority, in which, Student assigned his educational rights to Parent. Parent filing of Student's assignment of rights has rendered Scott's Valley's argument that Parent lacked standing to pursue the complaint moot. Thus, Scott's Valley's motion to dismiss is denied.

2. Motion to Amend the Complaint. On May 22, 2015, Carolyn Nedley, Attorney at Law, filed a Due Process Hearing Request (complaint) on behalf of Student,

naming Scotts Valley. On September 8, 2015, Ms. Nedley withdrew as Student's counsel. On September 15, 2015, Student was granted a continuance to allow Student time to retain new counsel.

On October 14, 2015, Ms. Leigh, on behalf of Student, filed a notice of representation and a Motion for Leave to File Amended Complaint (amended complaint). On October 15, 2015, Scotts Valley filed its opposition to Student's motion.

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).) 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 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 contains allegations from the 2015-2016 school year. However, the original complaint did not contain any allegations from the 2015-2016 school year as it was filed prior to the beginning of the that school year. In the event that parties were allowed to continue filing amended complaints that contain allegations regarding events which occurred subsequent to the filing of the original complaint, cases would be perpetually delayed and would never reach the point of resolution at a due process hearing.

The purpose of the federal statutory time requirements is to prevent undue delay in resolving special education disputes. Although in moving to amend the complaint, Student is not asking for a continuance per se, the net result of granting Student's motion to amend would be a lengthy continuance of this case as the law requires that all timelines start over. Whereas, denial of the amended complaint would not preclude Student from litigation any allegations which occurred in the 2015-2016 school year, since Student has the ability to file a new complaint containing those issues. Therefore, Student has failed to demonstrate good cause for the filing of an amended complaint and Student's motion to amend the complaint is denied. This order does not address Student's arguments regarding amending the allegations which fall into the time period covered by the original complaint, because the proposed amended complaint must be viewed as a whole.

3. Motion for Continuance of the Due Process Hearing: After Student's motion to amend the complaint was denied, Student requested a 30 day continuance of the hearing, on the basis that Student's counsel had only been recently retained and required additional time to prepare for hearing. Scotts Valley opposed Student's request.

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).)

Student established good cause to continue the due process hearing for a short period of time in order to prepare for hearing. Therefore, the due process hearing is continued. This matter will be set as follows:

Telephonic PHC:

Date: November 9, 2015

Time: 10:00 AM

Due Process Hearing:

Date: November 17, 18, and 19, 2015, and continuing day to day, Monday through Thursday, as needed at the discretion of the ALJ.

Time: 9:30 AM on November 17, 2015 and 9:00 AM on November 18 and 19, 2015.

4. Other Matters. After Student's motion to amend was denied, Student expressed a concern that she would not be able to argue that Parents should be reimbursed for expenses related to Parent's unilateral placement of Student at Fusion Academy during the 2013-2014 school year. Student's original complaint contained reimbursement of Parents for expenses related to Student being unilaterally placed at a "private school" during a time period which would have included the 2013-2014 school year as a proposed remedy. At the PHC, Scotts Valley stipulated that it was on notice that reimbursement of Parents for expenses related to Student being placed by Parents at Fusion Academy was at issue in this case. At the PHC, the undersigned indicated that Scotts Valley's stipulation would be memorialized as part of this order.

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 November 9, 2015.

5. Settlement. If the matter settles before hearing, 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.

DATE: October 20, 2015

/s/

B. ANDREA MILES
Administrative Law Judge
Office of Administrative Hearings