

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS OF:

PARENT ON BEHALF OF STUDENT,

and

DOWNEY UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021040841

OAH CASE NUMBER 2021080311

ORDER FOLLOWING VIDEO PREHEARING CONFERENCE
GRANTING MOTION TO AMEND AND DENYING MOTION
FOR FINDING OF FACT

OCTOBER 18, 2021

On October 18, 2021, Administrative Law Judge Brian H. Krikorian, Office of Administrative Hearings, held a prehearing conference by videoconference. The Administrative Law Judge is called an ALJ. The Office of Administrative Hearings is called OAH. The prehearing conference is called a PHC.

Surisa Rivers, Attorney at Law, appeared on behalf of Student. Alifia Mithaiwala, Attorney at Law, appeared on behalf of Downey Unified School District. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

MOTIONS

STUDENT'S MOTION FOR FINDING OF PROCEDURAL VIOLATION

Student filed a motion to have OAH find that Downey Unified procedurally violated the Individuals with Disabilities Education Act, referred to as the IDEA, from February 24, 2020, until January 19, 2021. Downey Unified orally opposed the motion. OAH does not have jurisdiction to rule on motions for summary judgments or other dispositive factual motions. As such, Student's motion is denied without prejudice to Student raising the issues in the motion at the hearing.

DOWNEY UNIFIED'S MOTION TO AMEND

On August 10, 2021, Downey Unified filed a due process hearing complaint with OAH. The complaint addressed whether the proposed January 2021 individualized educational program for Student, referred to as an IEP, offered a free and appropriate public education, referred to as a FAPE. Downey Unified's complaint was consolidated with Student's complaint. On October 13, 2021, Downey Unified filed a motion to amend its due process hearing complaint to include a September 2021 proposed amendment to the IEP. Downey filed its motion more than five days before the due process hearing. Downey did not request a continuance of the hearing date.

An amended complaint may be filed when the other party consents in writing and is given the opportunity to resolve the complaint through a resolution session or when the hearing officer grants permission. The hearing officer may grant permission at

any time more than five days before 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 opposed the motion on the ground that the substance of the amendment would limit the period in which Student could obtain remedies in Student's case while expanding the time period for Downey Unified to argue it had provided a FAPE to Student. Student also raised concerns that the amendment would require additional witnesses and hearing dates.

Downey Unified's motion was deemed timely and is granted. The amended complaint shall be deemed filed on the date of this Order. The hearing in the matter is continued to the following dates: November 9 (hearing to commence at 1:00 PM on that day), November 10, November 16, November 17, and November 18, 2021. The Prehearing Conference was continued to November 1, 2021, at 1:00 PM. Any additional scheduling issues related to experts and witnesses, or additional hearing dates, will be discussed with the ALJ at the hearing.

Student may file a motion to amend Student's issues to adjust the dates of the relevant periods to conform to Downey Unified's amendment by the close of business on October 22, 2021. Absent good cause, granting a motion to amend Student's issues will not reset the case schedule.

ORDER INCLUDES ALL RULINGS

This Order includes all rulings made at the prehearing conference. Any discussion and conversation not referenced in this Order is not binding on the ALJ conducting the hearing and may not be relied upon by the parties. The parties should

be aware that, at hearing, the ALJ conducting the hearing has discretion to reconsider any part of this Order.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "Brian Krikorian". The signature is fluid and cursive, with the first name "Brian" and last name "Krikorian" clearly distinguishable.

Brian Krikorian

Administrative Law Judge

Office of Administrative Hearings