

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS OF:
PARENT ON BEHALF OF STUDENT,

and

TAMALPAIS UNION HIGH SCHOOL DISTRICT,
OAH CASE NUMBER 2021100290
OAH CASE NUMBER 2021110001

ORDER GRANTING MOTION TO AMEND COMPLAINT
AND CONTINUING DUE PROCESS HEARING

NOVEMBER 22, 2021

On October 8, 2021, Parent on behalf of Student filed with the Office of Administrative Hearings, referred to as OAH, a request for due process hearing in OAH case number 2021100290, naming Tamalpais Union High School District. A request for due process hearing is referred to as a complaint.

On October 28, 2021, Tamalpais Union filed a complaint in OAH case number 2021110001, naming Student. The two cases were consolidated by OAH Order dated November 4, 2021.

Student's complaint alleged that Tamalpais failed to offer Student a FAPE over the two years preceding the complaint. Tamalpais's complaint alleged that Student was placed in a program with embedded academic and social emotional supports and was doing well. The consolidated cases are scheduled for hearing to begin on December 7, 2021.

MOTION TO AMEND

Tamalpais contends that Student's triennial individualized education program, or IEP, review is due in Spring, but in response to its request to assess, Parent on November 12, 2021, consented subject to a number of conditions. Tamalpais seeks to amend its complaint to add a claim that it has the right to assess Student without Parent's conditions. Tamalpais also seeks a short continuance of three weeks to prepare for the additional claim, supported by the sworn declaration of counsel.

Student opposes the continuance, arguing that Tamalpais has misrepresented the facts and does not require additional time to prepare for hearing.

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).)

The motion to amend was filed more than five days prior to the due process hearing, and the declaration of counsel established that the issues are related and will involve overlapping witnesses and evidence. The motion to amend is timely and is granted. The amended complaint shall be deemed filed on the date of this order, the

previously determined primary case designation remains, and the decision timeline governed by amended complaint in OAH case number 2021110001, Tamalpais' case.

MOTION FOR 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. (Ed. Code, § 56505, subd. (f)(3); 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 or imposing conditions on the continuance; and any other relevant fact or circumstance. (Cal. Rules of Court, rule 3.1332(d).)

The request for continuance is granted. All dates are vacated. Tamalpais has established good cause as the amendment is a significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. The continuance for the parties to prepare for hearing on the additional issue is very short, and Student

has not established prejudice from such a short continuance. New dates will be scheduled as follows:

Prehearing Conference will be held on December 17, 2021, at 1:00 PM.

Due Process Hearing will be held on December 28, 2021 through December 30, 2021. The hearing shall begin at 9:30 AM on all days unless otherwise ordered. The hearing shall continue day to day, as needed at the discretion of the Administrative Law Judge.

The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure their availability to testify. Good cause for witness unavailability is not established by failing to properly notify or subpoena a witness. Prehearing conference statements and motions are due to OAH no later than three business days before the prehearing conference or with evidence of good cause why it was not possible to file the motion by that date.

IT IS SO ORDERED.

Alexa Hohensee

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Administrative Law Judge

Office of Administrative Hearings