

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

V.

ELK GROVE UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021050530

ORDER DENYING MOTION TO AMEND COMPLAINT

DECEMBER 15, 2021

On November 22, 2021, Student filed a motion to file an amended due process request, with the Office of Administrative Hearing, called OAH. On December 14, 2021, Elk Grove Unified School District filed notice of non-opposition to Student's motion to amend.

PROCEDURAL HISTORY

On May 17, 2021, Student filed a request for due process hearing with OAH, naming Elk Grove Unified School District. OAH scheduled the hearing for July 13, 2021. On July 1, 2021, OAH granted the parties' joint request, scheduled mediation for July 14, 2021, and continued the hearing to September 14, 2021.

The parties mediated on July 14, 2021. On August 17, 2021, the parties filed a joint request for a second mediation and a second hearing continuance. Second continuances are disfavored, especially for the length of time requested by the parties. However, the parties stated they had agreed, at the July 2021 mediation, to independent education evaluations and to the services Student would receive at the start of the 2021-2022 school year. Therefore, the parties wanted to continue the hearing until the assessments were completed and considered by Student's individualized educational program team. If necessary, the second mediation would resolve any remaining issues and avoid the expense and delay of litigation. OAH therefore found good cause and granted the joint request, setting a second mediation for October 26, 2021, and a continued hearing date to December 7, 2021. On October 22, 2021, the parties cancelled the mediation.

On November 22, 2021, the same day Student filed the motion to amend, Student's counsel signed a joint request to reschedule the cancelled mediation and continue the hearing for a third time. In a good cause statement filed with the joint request, the parties said they cancelled the October 2021 mediation because Student's counsel was ordered to appear at a hearing in another due process matter. Also, one of the independent evaluations would not be completed and reviewed by Student's IEP team until early December 2021. Both parties agreed that information from the IEP team meeting, including a continued review of the other evaluations, would allow for resolution, without having to engage in protracted litigation. Based on the representations, OAH found good cause, granted the joint motion, rescheduled the second mediation for January 18, 2021, and continued the hearing to February 15, 16, and 17, 2022. The parties were cautioned that no further continuances would be granted, absent extraordinary good cause.

STUDENT MOTION TO AMEND COMPLAINT

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 seeks to add issues of alleged substantive violations that occurred after the filing of the initial complaint. Elk Grove convened IEP team meetings on October 22 and November 15, 2021, and reviewed the independent educational evaluations.. Student now wishes to amend the complaint to add additional issues related to Elk Grove's offer of FAPE, the two IEP meetings, and the independent evaluations.

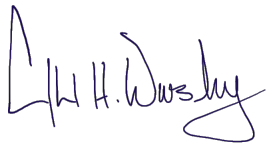
While Student's unopposed motion to amend was filed more than five days prior to hearing, granting such a motion is within the sound discretion of the administrative law judge. Here, OAH has continued the hearing three times. OAH found good cause for the two most recent continuances based upon the parties' representations that the agreed-upon independent evaluations, and subsequent IEP team meetings, would better enable the parties to resolve remaining issues, raised in Student's initial complaint, at a second mediation. The continuances were not intended to provide Student with opportunities to add issues to insert in an amended complaint, seven months after the initial complaint's filing, and restart the applicable timeline for the hearing.

The Individuals with Disabilities Education Act specifically states that nothing in the Act shall be construed to preclude a parent from filing a separate due process

complaint on an issue separate from a due process complaint already filed. (20 U.S.C. § 1415(o); 34 C.F.R. § 300.513(c) (2006); Ed Code, § 56509.) Therefore, Student is not precluded from filing a new due process complaint on issues that accrued as a result of the two most recent IEP team meetings.

Student's motion to amend the complaint is denied. The hearing will proceed, as presently scheduled, on Student's initial complaint.

IT IS SO ORDERED.

A handwritten signature in blue ink, appearing to read "Clifford H. Woosley". The signature is stylized with a large initial "C" and a long, sweeping underline.

Clifford H. Woosley

Administrative Law Judge

Office of Administrative Hearings