

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:
PARENT ON BEHALF OF STUDENT

AND

ORINDA UNION SCHOOL DISTRICT
OAH CASE NUMBER 2021090149
OAH CASE NUMBER 2021090144

ORDER FOLLOWING PREHEARING CONFERENCE,
GRANTING ORINDA UNION SCHOOL DISTRICT'S MOTION
TO AMEND AND GRANTING JOINT MOTION TO
CONTINUE DUE PROCESS HEARING

JANUARY 10, 2022

On January 10, 2022 Administrative Law Judge Clifford H. Woosley, 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.

Roberta Savage, Attorney at Law, appeared on behalf of Student. Jennifer N. Baldassare, Attorney at Law, appeared on behalf of Orinda Union School District. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

ORINDA'S MOTION TO AMEND COMPLAINT

On September 3, 2021, Orinda file a request for due process hearing, referred to as Orinda's Case, naming Student. On September 7, 2021, Student filed a request for due process, referred to as Student's Case, naming Orinda. On September 13, 2021, OAH granted Student's motion to consolidate the two cases, designating Student's Case as the primary case. On October 20, 2021, OAH granted the parties' joint request for mediation, and continued the prehearing conference to January 10, 2022, and the hearing to January 19 and 20, 2022.

On January 5, 2022, Orinda filed a motion for leave to file an amended complaint. Orinda's complaint sought an OAH determination that its offer made at the November 29, 2020 individualized education program, called an IEP, as amended on March 25, 2021, provided Student with a free appropriate public education, called a FAPE. Orinda's proposed amended complaint now seeks an order that its November 29, 2021 IEP offer, as amended on December 15, 2021, provides Student with a FAPE. Student filed notice of non-opposition to Orinda's motion.

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).)

Here, the motion to amend is timely and the Student does not oppose. The motion to amend is granted. Orinda's Amended Complaint is deemed filed on the date of this order.

JOINT MOTION TO CONTINUE DUE PROCESS HEARING

The filing of Orinda's amended complaint resets the consolidated cases' timeline. OAH will issue a new scheduling order with due process hearing dates of February 1 through 3, 2022. The parties jointly requested that the hearing dates be continued to February 23, and 24, 2022, because both parties' counsel are scheduled for other due process hearings at that time.

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).)

Here, the parties have demonstrated good cause for the short continuance. Both parties' attorneys are engaged in previously scheduled due process hearings in other matters. The parties have cooperated and agreed upon the proposed dates for continuance. The joint motion for a continuance is granted.

ORDER

1. Orinda Union School District's motion to amend is granted. Orinda's amended complaint is deemed filed on the date of this order.
2. All applicable timelines for these consolidated matters shall be reset, and the 45-day timeline for issuance of the decision in the consolidated matters shall be based on the date of filing of Orinda's amended complaint, OAH case number 2021090144.
3. Student's Case, OAH case number 2021090149. remains primary for these consolidated matters.
4. The parties' joint motion to continue is granted.
5. All dates are vacated, and these consolidated matters are set as follows:

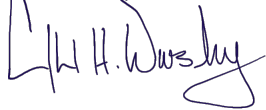
PREHEARING CONFERENCE will be held on February 14, 2022, at 10AM.

DUE PROCESS HEARING will be held on February 23, and 24, 2022.

PARTICIPANT INFORMATION SHEETS FOR MEDIATION AND PREHEARING CONFERENCES MUST BE FILED TWO BUSINESS DAYS PRIOR TO THE DATE OF THE SCHEDULED EVENT.

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. Prehearing conference statements and motions are due to OAH no later than three business days before the prehearing conference or with a showing of good cause why it was not timely filed.

IT IS SO ORDERED.

A handwritten signature in blue ink, appearing to read "Clifford H. Woosley", written over the typed name.

Clifford H. Woosley

Administrative Law Judge

Office of Administrative Hearings