

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

SAN DIEGO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024020477

ORDER DENYING MOTION TO FILE SECOND AMENDED
COMPLAINT

JUNE 28, 2024

On February 14, 2024, Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, called OAH, naming San Diego Unified School District. OAH scheduled Student's initial complaint for hearing starting April 3, 2024. Student contended San Diego denied Student a free appropriate public education, called a FAPE, from February 2022 to the filing of the complaint, by:

- Failing to make changes to Student's individualized education program, called an IEP, to address Student's lack of progress.
- Failing to assess Student in all areas of suspected disability.

- Requiring Parent to attend school with Student.
- Failing to accurately document Student's behavior.
- Failing to keep records of Student's in school suspensions, and requests for Parent to remove him from school.

Student also contended San Diego denied Student a FAPE in the 2023-2024 school year by requiring Parent to sign a November 2023 IEP for Student before District would provide an assessment plan.

On March 15, 2024, OAH granted the parties' joint motion to schedule mediation and continued the hearing of the case to June 4, 2024.

On May 20, 2024, Student filed a motion to file an amended complaint. The proposed amended complaint added the allegation that San Diego denied Student a FAPE during the 2023-2024 school year by failing to have a credentialed teacher for Student's classroom. San Diego did not oppose Student's motion to amend, which OAH granted on May 22, 2024. Hearing was rescheduled to begin July 9, 2024, with a prehearing conference scheduled for July 1, 2024.

On May 31, 2024, the parties jointly filed a second request for mediation and a further continuance of the hearing to August 20, 2024. OAH denied the parties' request for a second mediation because they failed to show good cause either for a second mediation, or to continue the case to August 20, 2024.

On June 24, 2024, Student filed a motion to file a second amended complaint, and San Diego filed notice it did not oppose Student's motion. The proposed second amended complaint added allegations that San Diego denied Student a FAPE in the 2023-2024 school year, by:

- Conducting its February 14, 2024 multidisciplinary assessment of Student inappropriately.
- Failing in its February 20, 2024 IEP:
 - To offer Student to offer Student an appropriate level of behavioral services.
 - To provide appropriate an appropriate placement.
 - To address Student's lack of progress.

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's motion to file a second amended complaint was filed more than five days prior to the due process hearing and is timely. However, Student did not show good cause for a further amendment and delay of the hearing of this matter. Student's additional proposed issues included in the second amended complaint all arose prior to Student's first amended complaint dated May 20, 2024. Student was not required to assert in the first amended complaint all issues known to Student at that time, and chose not to include claims arising from San Diego's alleged failures in February 2024 to conduct appropriate assessments and make an appropriate offer of FAPE in Student's IEP. However, having done so, Student was not free to assert the reserved issues on the

eve of trial through a proposed amendment that would further delay a twice-extended hearing date in a matter initially filed over four months ago.

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.) Continuances are disfavored.

This case is currently set for hearing on July 9, 2024, nearly five months after Student filed the initial complaint. Student did not establish good cause for waiting four months to file an amended complaint following San Diego's allegedly inappropriate February assessment and IEP. Student may file another complaint on the new issues proposed in Student's motion to amend. Therefore, the motion to amend is denied. All dates shall remain on calendar.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "Robert G. Martin", with a stylized flourish at the end.

Robert G. Martin

Administrative Law Judge

Office of Administrative Hearings