

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

SAN JUAN UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024090902

ORDER FOLLOWING PREHEARING CONFERENCE
VACATING EXPEDITED HEARING DATES AND ORDER
GRANTING MOTION TO AMEND

OCTOBER 14, 2024

On October 14, 2024, Administrative Law Judge Sabrina Kong, 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.

Attorney Geralyn Clancy appeared on Student's behalf. Attorney Tilman Heyer appeared on San Juan Unified School District's, called San Juan, behalf. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order.

On September 24, 2024, Student filed a due process complaint with OAH alleging an October 3, 2023 behavioral incident which resulted in San Juan holding a manifestation determination review and proposing the La Vista Center placement for Student on October 27, 2023. OAH set expedited and unexpedited hearing schedules in the case. Hearing for the expedited matter was set to start on October 22, 2024. On September 26, 2024, Student requested OAH unexpedite the case. OAH denied Student's request to unexpedite because even though neither party requested the case be expedited, the complaint included allegations of title 20 United States Code section 1415(k) violations challenging a manifestation determination review.

On October 4, 2024, Student filed a motion to amend the complaint but did not include a copy of the proposed amended complaint. On October 7, 2024, Student filed a copy of the proposed amended complaint. Therefore, the motion to amend was deemed filed on October 7, 2024. Student withdrew the issue regarding the October 27, 2023, manifestation determination review and represented that issues in the proposed amended complaint relate to FAPE claims and remedies and not challenges under title 20 United States Code section 1415(k). San Juan did not file a response to Student's motion to amend but at the PHC represented it did not oppose the motion to amend.

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 timely filed. At the PHC, attorney Clancy represented page 2, line 1-2 of the motion to amend had the wrong year and should read, "The parties agreed that the behavior was in fact a manifestation of her disability at the October 27, 2023 IEP meeting," instead of "October 27, 2024." The parties agreed that Student had been suspended one day during the 2022-2023 school year and San Juan did not need to hold a manifestation determination review on October 27, 2024, and held an IEP team meeting. The proposed amended complaint removed all references to the October 27, 2023 manifestation determination review but labelled the same event the October 27, 2023 IEP, in the proposed amended complaint. At the PHC, attorneys Clancy and Heyer answered questions about the facts alleged in the proposed amended complaint including San Juan's:

- failure to offer a FAPE, including placement and services at the October 27, 2023 IEP team meeting;
- failure to implement Student's December 15, 2022 IEP, as amended on May 5, 2023 IEP;
- failure to conduct a functional behavior assessment; and
- Student's one day suspension.

Attorney Heyer represented the placement offered at the October 27, 2023 IEP team meeting was not an interim alternative educational setting for 45-days but a FAPE offer. Attorney Clancy represented the allegations of San Juan's failures to implement Student's IEPs and conduct a functional behavior assessment were for the entire 2022-2023 school year and not restricted to after Student's October 2023 behavior incident. Student withdrew her challenge to the one-day suspension because San Juan had already expunged the suspension.

After discussion and confirmation by the parties' attorneys at the PHC, no components of expedited issues under title 20 United States Code section 1415(k) remained in the proposed amended complaint, the expedited hearing dates are vacated and Student's motion to amend is granted.

This Order includes all rulings made at the PHC.

ORDER

1. The expedited hearing dates are vacated.
2. The motion to amend the complaint is granted.
3. The amended complaint shall be deemed filed on the date of this order.
4. All applicable timelines shall be reset as of the date of this order.
5. OAH will issue a scheduling order with the new dates.

Sabrina Kong

Sabrina Kong

Administrative Law Judge

Office of Administrative Hearings