

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:

PARENT ON BEHALF OF STUDENT,

and

FULLERTON SCHOOL DISTRICT,
OAH CASE NUMBER 2024090644
OAH CASE NUMBER 2024100304

ORDER FOLLOWING PREHEARING CONFERENCE
GRANTING MOTION FOR CONTINUANCE OF DUE
PROCESS HEARING AND DENYING MOTION FOR LEAVE
TO FILE SECOND AMENDED COMPLAINT

DECEMBER 11, 2024

On December 9, 2024, Administrative Law Judge Thanayi Lindsey, 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.

James Golfo and Surisa Rivers, Attorneys at Law, appeared on behalf of Student. Lauri Arrowsmith and Amanda Cordova, Attorneys at Law, appeared on behalf of Fullerton School District, referred to as Fullerton. The request for due process hearing is called a complaint. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following orders.

HEARING DATES, TIMES, AND LOCATION

On December 3, 2024, Student retained an expert to prepare for its case-in-chief. Student requested Fullerton to conduct the observations on December 13, 2024; however, Fullerton's staff was unavailable. The expert was unavailable to complete three observations at Fullerton's school sites until December 17, 2024, because of prepaid travel plans. On December 5, Student filed its motion for continuance of the due process hearing to allow time for its expert to complete the observations and write a report.

On December 9, 2024, Fullerton filed an opposition to Student's motion and contends a lengthy continuance prejudices the case. However, during the PHC, Fullerton and Student agreed for the expert to complete the observations on December 17, 2024, and to continue the due process hearing to January 7, 2025. The parties have good cause to continue the due process hearing because of the expert's unavailability prior to December 13, 2024, Fullerton's unavailability on December 13, 2024, and the expert's and Fullerton's current availability on December 17, 2024. The continuance is short in length. Therefore, the stipulation to continue the due process hearing is granted.

The expert's observations are to be completed on December 17, 2024, at both Sunset Lane's special day class from 9:00 AM to 9:45 AM; and Laguna Road's resource

room from 10:00 AM to 10:30 AM and general education class from 10:45 AM to 11:30 AM. Student must serve Fullerton a copy of the expert's observation report before or on December 30, 2024, by 5:00 PM.

All previously scheduled dates are vacated. The case shall proceed as follows:

PREHEARING CONFERENCE will be held on December 23, 2024, at 10:00 AM.

DUE PROCESS HEARING will be held on January 7, 8, and 9, 2025.

The hearing will be conducted via telephone or videoconference and shall begin at 9:30 AM and end at 3:30 PM on all days, unless otherwise ordered. The hearing shall continue day to day at the discretion of the ALJ.

The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses, if necessary, to ensure that the witnesses will be available to testify. A witness will not be regarded as unavailable for purposes of showing "good cause" to continue the hearing if the witness is not properly notified of the hearing date or properly subpoenaed.

All other prehearing matters shall be addressed at the December 23, 2024, prehearing conference. All prehearing motions must be filed three business days before the PHC.

MOTION FOR LEAVE TO FILE SECOND AMENDED REQUEST FOR DUE PROCESS HEARING

On September 17, 2024, Student filed with OAH a Request for Due Process Hearing in OAH case number 2024090644, Student's Case, naming Fullerton School District.

On October 8, 2024, Fullerton School District filed a Request for Due Process Hearing in OAH case number 2024100304, Fullerton School District's Case, naming Student.

On October 8, 2024, Fullerton School District filed a Motion to Consolidate the above cases. On October 17, 2024, OAH issued an order granting the motion to consolidate with Student's case as the primary and issued a new scheduling order. On October 24, 2024, Student filed a motion to amend the complaint. On October 25, 2024, OAH issued an order granting the request to amend the complaint and issued a subsequent scheduling order.

On December 5, 2024, Student filed a motion for leave to file a second amended complaint and a proposed second amended complaint. Student contends the proposed second amended complaint clarifies Issue 4 in light of new facts and information. On December 9, 2024, District filed an Opposition to Student's motion. District contends the proposed second amended complaint alleges no new facts and acts to delay the due process hearing dates.

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, given the amount of time this matter has been on calendar, the number of prior continuances, and that the proposed second amended complaint does not allege new facts, Student failed to establish good cause for leave to file the second amended complaint. The motion is denied.

SETTLEMENT

The parties shall immediately inform OAH in writing if they reach a settlement or otherwise resolve the dispute before the scheduled hearing. If the parties reach a settlement within five days of the scheduled start of the due process hearing, the parties shall also inform OAH of the settlement by telephone at (916) 263-0880.

If a full and final written settlement agreement is reached after 5:00 PM the day before the hearing, the parties shall leave a voicemail message regarding the settlement at (916) 274-6035. The parties should also leave contact information such as cellular phone numbers of each party or counsel for each party. At the same time, the parties should send the signature page of the signed agreement or a letter withdrawing the case to OAH at <https://www.applications.dgs.ca.gov/oah/oahsftweb>.

Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received by OAH. If an agreement in principle is reached, the parties should plan to attend the scheduled hearing unless different arrangements have been agreed upon by the assigned ALJ. The assigned ALJ will check for messages before the hearing.

If the matter settles subject to board approval, in addition to a signed copy of the signature page of the settlement agreement, the parties shall provide the date of the next board meeting. The hearing dates will not be cancelled without this information.

FAILURE TO COMPLY

Failure to comply with this order may result in the exclusion of evidence or other sanctions.

ORDER INCLUDES ALL RULINGS

This order includes all rulings made at the PHC.

IT IS SO ORDERED.

Thanayi Lindsey
Thanayi Lindsey (Dec 11, 2024 16:14 PST)

Thanayi Lindsey

Administrative Law Judge

Office of Administrative Hearings