BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

SAN BERNARDINO CITY UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023050849

ORDER FOLLOWING PREHEARING CONFERENCE FOR HEARING BY VIDEOCONFERENCE AND ORDER GRANTING MOTION TO AMEND

AUGUST 15, 2023

On August 14, 2023, Administrative Law Judge Claire Yazigi, 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.

Tania Whiteleather, Attorney at Law, appeared on behalf of Student. Karen Gilyard, Attorney at Law, appeared on behalf of San Bernardino City Unified School District. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

MOTIONS

Student filed a motion to amend Student's complaint and amended complaint after work hours on Friday, August 11, 2023. As a result, the motion was deemed filed on Monday, August 14, 2023, the day of PHC. 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).)

At PHC, San Bernardino objected to Student's motion on two grounds. First, San Bernardino objected to the motion's timeliness, specifically that the motion was not filed three business days before prehearing conference.

Student's motion was made more than five business days before hearing, but not three days before prehearing conference. Counsel for Student represented on the record that she was delayed in filing the motion to amend due to extreme personal tragedy that occurred during the time that prehearing motions were due. Counsel for Student established good cause as to why the motion was not filed three business days before PHC. Further, counsel for San Bernardino was able to review the motion by the time of PHC and was able to argue San Bernardino's objections to it at PHC. San Bernardino stated that no additional time was needed to review Student's motion during PHC.

Second, San Bernardino objected to Student's motion to amend on the ground that the allegation in the amended complaint regarding the October 6, 2021, IEP could

have been brought in the original complaint. A party shall request an impartial due process hearing within two years of the date the party knew or should have known about the alleged action that forms the basis of the complaint. (20 U.S.C. §1415(f)(3)(C).) The October 6, 2021, IEP is within the two-year statute of limitations, and San Bernardino has not alleged any issue preclusion that would bar Student form bringing this allegation. Student's motion to amend is granted over both of San Bernardino's objections.

The amended complaint shall be deemed filed on the date of this order. All applicable timelines shall be reset as of the date of this order. OAH will issue a scheduling order with the new dates.

San Bernardino also objected to the timeliness of student's PHC statement, as it was filed two days before PHC instead of three. Because Student's complaint is hereby amended, the parties shall file new statements for the new PHC to be set by OAH and no ruling is made on this objection as moot.

Because Student's motion to amend was granted, the undersigned did not address San Bernardino's motion to dismiss non-IDEA issues in Student's original complaint. Nothing in this order shall prevent San Bernardino from moving to dismiss any non-IDEA claims in the amended complaint.

SETTLEMENT

The parties are encouraged to continue working together to reach an agreement before the due process hearing. The parties shall inform OAH in writing immediately if they reach a settlement or otherwise resolve the dispute before the scheduled hearing. In addition, if a settlement is reached 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. At the same time, the parties should send the signature page of the signed agreement or a letter withdrawing the case to OAH by visiting OAH Secure e-file at https://www.applications.dgs.ca.gov/oah/oahsftweb.

If a full and final written settlement agreement is reached after 4:00 PM the day prior to 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.

Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received and processed 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.

IT IS SO ORDERED.

Claire Yazigi

Claire Yazigi
Administrative Law Judge
Office of Administrative Hearings