BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. VACAVILLE UNIFIED SCHOOL DISTRICT,	OAH Case No. 2017060531
VACAVILLE UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2017040782 ORDER GRANTING REQUEST FOR RECONSIDERATION, DENYING MOTION TO AMEND, AND DENYING REQUEST FOR CONTINUANCE

On November 29, 2017, the undersigned administrative law judge issued an order denying Student's request to file an amended request for due process hearing (complaint). On November 30, 2017, Student filed with the Office of Administrative Hearings a motion for reconsideration, or in the alternative, a motion for a continuance of the due process hearing because Student's experts will not complete their private educational evaluations until January of 2018. This matter is scheduled for hearing on December 5, 2017. As of the time of this Order, OAH has not received a response from Vacaville Unified School District.

APPLICABLE LAW

Reconsideration

The Office of Administrative Hearings will generally reconsider a ruling upon a showing of new or different facts, circumstances, or law justifying reconsideration, when the party seeks reconsideration within a reasonable period of time. (See, e.g., Gov. Code, § 11521; Code Civ. Proc., § 1008.) The party seeking reconsideration may also be required to provide an explanation for its failure to previously provide the different facts, circumstances or law. (See *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1199-1200.)

Amendment of Complaint

An amended complaint may be filed when either (a) the other party consents in writing and is given the opportunity to resolve the complaint through a resolution session, or (b) the hearing officer grants permission, provided the hearing officer may grant such permission at any time more than five (5) days prior to 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).)

Continuance

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. (See 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; and any other relevant fact or circumstance. (See Cal. Rules of Court, rule 3.1332(d).

DISCUSSION

Reconsideration

Student's motion for reconsideration is supported by declarations under penalty of perjury from Parent and from Student's Counsel. In summary, Student asserts that it has become more evident this school year that he requires an appropriate behavior plan based on an appropriate functional behavior assessment; Parents were not able to fund independent educational evaluations and made special arrangements with two assessors in early October 2017 to complete an occupational therapy and a speech and language and augmentative alternative communication assessment; these independent assessors informed Parent several weeks ago that the assessments would not be completed until January 2018; and Student's Counsel belatedly realized that Vacaville should have conducted a physical therapy and/or orientation and mobility assessment of Student.

Student alleges new facts and circumstances in support of his request for reconsideration. Accordingly, Student's request for reconsideration is Granted.

Motion to Amend

On reconsideration, Student's motion to amend is denied. As indicated in the November 29, 2017 Order Denying Motion to Amend, the Individuals with Disabilities Act requires that special education matters proceed to hearing expeditiously. Further, the law contemplates that a party may file more than one request for hearing as circumstances change, and raise issues separate from those already pending hearing. When, as here, a matter has been continued multiple times, a request to amend filed late in the life of the case, needs to be balanced with the requirement of a speedy resolution to disputed issues.

Vacaville filed its initial request for due process on April 18, 2017, seeking to defend its occupational therapy and speech and language and augmentative alternative communication assessments of Student. On May 8, 2017, OAH granted the parties' joint request to continue the hearing date. On June 5, 2017, OAH granted Vacaville's motion to amend its complaint to include a defense of its functional behavior assessment of Student due to Parents' further request for an independent behavior assessment.

On June 9, 2017, Student filed his initial complaint. On June 16, 2017, OAH granted Student's motion to consolidate which resulted in Vacaville's assessment issues being re-set for hearing for a third time. In late June 2017, both counsel filed motions to continue the hearing date which was then scheduled for August 3, 2017. Both counsel specifically requested that hearing be continued to November 14, 2017. On June 30, 2017, the undersigned administrative law judge, in granting the parties' second joint request to continue the hearing date to November 14, 2017, cautioned the parties that given the length of the requested continuance, no further continuances would be granted absent a showing of extraordinary good cause.

At the time of the November 3, 2017 prehearing conference, Student did not list his independent assessors as witnesses for hearing. Student requested a further continuance because his counsel had a scheduling conflict with another OAH due process hearing. The undersigned ALJ granted Student's request to continue and the matter was set for hearing on November 28, 2017. In his November 17, 2017 amended prehearing conference statement, Student listed his two independent assessors as expert witnesses for hearing. At the November 20, 2017 prehearing conference, Student again requested a continuance due to a continued scheduling conflict for his counsel. The prehearing conference proceeded and the hearing was continued once more to December 5, 2017.

Student asserts that he moved to amend his complaint to include an issue regarding the appropriateness of Vacaville's behavior assessment, because he wants to ensure that if Vacaville fails to establish that its functional behavior assessment is appropriate, that he will be awarded an independent behavior assessment. Vacaville has put at issue its functional behavior assessment and whether Student is entitled to an independent behavior evaluation.

This issue is already pending adjudication on December 5, 2017. Additionally, nothing prevents Student from bringing a separate due process complaint regarding Vacaville's alleged failure to conduct a physical therapy and/or orientation or mobility assessment. That Student's Counsel did not recognize this as an issue sooner does not constitute good cause to amend the complaint at this late stage. The reasoning of the November 29, 2017 Order Denying Motion to Amend is incorporated herein. Accordingly, Student's motion to amend is denied.

Continuance

Student seeks to continue this matter because his two experts will not complete their assessments until sometime in January 2018. Student asserts that he requires their testimony to defend against Vacaville's complaint, and that if this hearing is not delayed, he will lack the "firepower" of his private assessments as contemplated by the Supreme Court in *Schaffer v. Weast* (2005) 546 U.S. 49, 60-61 (*Schaffer*). Vacaville has exercised its right to deny Student's requests for independent evaluations at publicly expense and instead proceed to hearing to defend the appropriateness of its assessments. *Schaffer* does not support Student's contention that he is entitled to delay Vacaville's right to proceed to hearing until he receives expert input. While Student may feel more confident challenging Vacaville's assessments after having received private assessments, Student has not established good cause for this matter to be continued yet again.

ORDER

1. Student's Motion for Reconsideration is granted.

2. On reconsideration, Student's Motion to Amend is denied.

3. Student's Motion to Continue is denied.

4. All dates remain as previously set.

IT IS SO ORDERED.

DATE: December 1, 2017

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Theresa Ravandi
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THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings