BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH CASE NO. 2013050644
v.	ORDER FOLLOWING PRE-HEARING CONFERENCE AND GRANTING CONTINUANCE AND MOTION TO AMEND
OAKLAND UNIFIED SCHOOL DISTRICT.	

On July 5, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Charles Marson, Office of Administrative Hearings (OAH). Natashe Washington, Attorney at Law, appeared on behalf of Student. Lenore Silverman and Alejandra Leon, Attorneys at Law, appeared on behalf of the Oakland Unified School District. The PHC was recorded.

Based on discussion with the parties, the ALJ issues the following order:

1. Continuance. This matter is currently set for due process hearing starting on July 9, 2013. On July 2, 2013, Student filed a motion to continue this matter on the ground that on July 1, 2013, his attorney discovered in the District's evidence binders an individualized education program (IEP) dated April 3, 2103, and a speech and language assessment of Student dated February 2012, which had not previously been disclosed in response to a records request. Student argues that these documents newly disclosed by the District will necessitate further preparation and an amendment to the complaint. The District opposed the motion, arguing that Student must have been aware of the April 2, 2013 IEP and the February 2012 assessment even if the District had not produced them until the delivery of its exhibit binder on or about July 1, 2013.

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).)

Student has demonstrated good cause for a brief continuance. Whether or not Student or his attorney were aware of the contested documents before July 1, 2013, the District was obliged to produce them in response to Student's records request. (See Ed. Code, § 56504.) The original complaint not only does not recognize the existence of the documents; it makes allegations inconsistent with their existence, thus suggesting the possibility that at least Student's attorney was unaware of them before they were revealed in the District's exhibit binder.[1] No previous continuance has been granted in the matter, and judicial economy favors resolution of the dispute in a single proceeding based upon a complete record of the facts. The due process hearing in this matter is therefore continued to July 10, 2013.

2. Amendment of complaint. Student also filed on July 2, 2013, a motion for leave to amend his complaint for the reasons set forth above. The District did not oppose the motion. Now that the hearing is set for July 10, 2013, there are five days between this order and the hearing, so the motion to amend is timely and may be granted. (See 20 U.S.C. § 1415(c)(20(E)(II). Student's motion to amend his complaint is granted. All dates currently set, including the July 10, 2013 hearing date, are vacated. Student shall amend his complaint on or before July 19, 2013. If Student fails to amend his complaint by that date, OAH will restore the matter to the calendar for status conference on July 24, 2013 at 10:00 A.M., without further notice to the parties and will proceed to hearing on the original complaint.

IT IS SO ORDERED.

Dated: July 5, 2013

/s/
CHARLES MARSON
Administrative Law Judge
Office of Administrative Hearings

[1] Student also filed a motion for sanctions on July 2, 2013, based on the District's alleged failure to produce the documents in response to the records request. This motion is not ripe for decision and no view is expressed here on its merits.