BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. AVESON GLOBAL LEADERSHIP ACADEMY, AVESON SCHOOL OF LEADERS, AND AVESON CHARTER SCHOOLS.	OAH Case No. 2017090125 ORDER GRANTING REQUEST FOR RECONSIDERATION, DENYING MOTION FOR CONTINUANCE TO FILE SECOND AMENDED COMPLAINT, AND DENYING CHALLENGE FOR CAUSE

On March 2, 2018, the undersigned administrative law judge held a Prehearing Conference for the due process hearing scheduled to begin March 8, 2018. During the PHC, Student's motion to continue the hearing was denied. On March 6, 2018, OAH issued an order following the PHC. On March 6, 2018, Student filed a motion for reconsideration of that ruling and a challenge for cause of the undersigned ALJ. On March 8, 2018, Aveson filed an opposition to Student's motion. On March 9, 2018, Student filed a reply to Aveson's opposition.

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.)

Motion to Continue

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).)

Amended 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. 2 §1415(c)(2)(E)(i).)[1] The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. §1415(c)(2)(E)(ii).)

DISCUSSION

Reconsideration

Student's motion for continuance to file a second amended complaint is a motion to reconsider the undersigned ALJ's prior order denying the motion to continue ruled on during the PHC of March 2, 2018. Mother's declaration and a letter from Dr. William Vicary are attached to the motion.

The motion for reconsideration is granted in order to review the new or different facts and circumstances raised by Student.

Amendment

In her declaration, Mother alleges the undersigned ALJ "falsely stated that it was too late to amend," and "falsely" stated that one must amend within five business days of hearing, in support of the request for reconsideration. Mother contends she was prevented from asking for leave to amend at the March 2, 2018 PHC, because of the ALJ's statements on the record.

On January 8, 2018 Student filed a motion for leave to amend, citing 20 USC § 1415(c)(2)(E)(i)(II) and Education Code § 56502(e), and attached an Amended Request for Mediation and Due Process Hearing. Student correctly stated the rule that the ALJ may grant leave to amend up to 5 days before the hearing and demonstrated that the motion to amend, and the amended request, were timely because the documents were filed more than 5 days before the hearing. Knowing this rule for at least two months, Student did not file either a motion to amend or a second amended complaint prior to the PHC on Friday, March 2, 2018. Student has not

[1] All statutory citations are to Title 20 United States Code unless otherwise indicated.

explained how anything said during the PHC of March 2, 2018 prevented him from filing a second amended complaint prior to the PHC.

Student further contends that it was an abuse of discretion to deny Student's oral motion for leave to amend during the PHC. However, Student had not filed either a motion for leave to amend or a second amended complaint at the time of the PHC of March 2, 2018, so there was no way for the ALJ to consider the merits of the motion.

Student's reply brief argues that he should be allowed to amend even though he has not filed a motion to amend or a second amended complaint. Student contends that pleading requirements under the IDEA are liberal. However, granting a motion to amend is discretionary. While pleading standards are liberal under the IDEA, a pleading is required. (See, Education Code, § 56502(a)-(c).) Student cites no authority allowing an ALJ to grant, carte blanche, leave to amend without first reviewing the amended pleading.

Continuance

On February 27, 2018, Student filed a motion to continue the hearing in order to obtain counsel. On February 28, 2018, Student filed a second motion to continue adding additional explanations. During the PHC, Mother asked for a continuance several times in order to obtain counsel. When the motion to continue was denied, she inquired about amending her complaint, which would serve to continue the hearing dates. She explained that the matter became much more complicated when District filed its complaint, which was consolidated with Student's case. District has since dismissed its case, alleviating concern over the consolidation.

Student filed his complaint on September 5, 2015. The matter has been continued three times: once by joint request on October 23, 2017; once on Student's request on November 27, 2017; and once by an amended complaint filed on January 12, 2018.

The reasons stated in Student's February 2018 request for continuance included the death of an extended family member overseas, and the desire to obtain an attorney. For the reasons stated on the record and in the Order, Student did not meet good cause for a continuance at that time.

Student's motion for reconsideration contains a letter from Dr. William Vicary, which is not signed under penalty of perjury. The letter states that Mother suffers from extreme stress and diabetes in addition to the grounds previously asserted. There has been no showing that delaying the hearing will have any impact on Mother's ongoing conditions.

Student's renewed motion to continue does not establish good cause for further continuance. The matter has already been continued three times and was set to begin on March 8, 2018. The decision in this matter will not be rendered until the case is eight months old, a result contrary to public policy and established due process timelines.

Student has consistently asserted the underlying reason for seeking a continuance is to file a second amended complaint. Here, Student is not prejudiced by denying the motion to amend. He can file a separate complaint to state new issues.

Student's motion to continue is denied. The hearing will proceed on March 13, 2018, at 9:30 a.m. Any further motions filed before the hearing will be ruled on at the hearing.

CHALLENGE FOR CAUSE

An ALJ may be disqualified for bias, prejudice, or interest in the proceeding. (Gov. Code, § 11425.40, subd. (a).) The following, without further evidence of bias, prejudice, or interest, are not by themselves grounds for disqualification: 1) the ALJ is or is not a member of a racial, ethnic, religious, sexual, or similar group and the proceeding involves the rights of that group; 2) the ALJ has experience, technical competence, or specialized knowledge of, or has in any capacity expressed a view on, a legal, factual, or policy issue presented in the proceeding; or 3) the ALJ has as a lawyer or public official participated in the drafting of laws or regulations or in the effort to pass or defeat laws or regulations, the meaning, effect, or application of which is in issue in the proceeding. (Gov. Code, § 11425.40, subd. (b).)

In other words, to disqualify an ALJ for cause, a factual showing of actual bias or prejudice is required. (See *American Isuzu Motors, Inc. v. New Motor Vehicle Board* (1986) 186 Cal.App.3d 464, 472.) For example, in order to be a basis for disqualification, the financial interest of the ALJ in the outcome of the case must be direct, personal, and substantial, rather than slight. (*Haas v. County of San Bernardino* (2002) 27 Cal.4th 1017, 1031.) Similarly, personal involvement in the case by the ALJ or familial connections may warrant disqualification based solely on the probability of bias. (See *Clark v. City of Hermosa Beach* (1996) 48 Cal.App.4th 1152, 1170-1173.) However, in most other cases, including claims of bias arising from the hearing officer's personal or political views, disqualification will not occur absent a showing of actual bias. (*Haas, supra*, at p. 1032.)

Student contends that, during the PHC, the undersigned ALJ "conducted business" when Mother was not present on the telephone and was prevented from being advised by her advocate. During the course of the PHC, Mother frequently asked for time to speak to her advocate, who was not present in the room with her. The undersigned ALJ waited for Mother, occasionally asked if she was still there, and did not proceed with the PHC until Mother's voice was again heard.

Here, Student has not shown actual bias or prejudice by the undersigned ALJ against Student. Accordingly, Student's challenge for cause is denied.

ORDER

1. Motion for Reconsideration is granted.

2. Based on reconsideration of Student's motion to continue, the motion is denied.

3. Student's challenge for cause is denied.

4. The hearing will proceed on March 13, 2018, at 9:30 a.m.

IT IS SO ORDERED.

DATE: March 09, 2018

DocuSigned by:

57C0AE1DAC90C499...

COLE DALTON
Administrative Law Judge
Office of Administrative Hearings