BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

IRVINE UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023030636

ORDER DENYING REQUEST FOR RECONSIDERATION AND GRANTING MOTION FOR LEAVE TO AMEND COMPLAINT

APRIL 25, 2023

On March 20, 2023, Parent on behalf of Student filed a Due Process Hearing Request, referred to as a complaint, with the Office of Administrative Hearings, naming Irvine Unified School District. The Office of Administrative Hearings is referred to as OAH. On April 5, 2023, Irvine moved to dismiss issue 2(h)(2) that challenged a suspended expulsion agreement, for lack of jurisdiction.

On April 10, 2023, OAH convened a prehearing conference, referred to as PHC. At the PHC, the parties and the ALJ clarified the issues, and Parent stated she was not appealing Student's expulsion. On April 12, 2023, OAH issued an Order Following Prehearing Conference, Clarifying and Un-expediting Issues, and Granting Irvine's

Motion to Dismiss Issue 2(h)(2). On April 19, 2023, Student filed a request for reconsideration of OAH's order dismissing issue 2(h)(2) and a motion to add an issue appealing Student's expulsion. Irvine did not file a response.

REQUEST FOR RECONSIDERATION

OAH 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, generally within 10 days. (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.)

Student offers no new facts, circumstances, or law to support reconsideration of OAH's order dismissing issue 2(h)(2) for lack of jurisdiction. Student's issue 2(h)(2) alleged the December 8, 2022, suspended expulsion agreement between Irvine and Student violated public policy. In the motion for reconsideration, Student argued that she did not understand the ramifications of the suspended expulsion agreement. However, Student did not show that OAH has jurisdiction to determine if a suspended expulsion contract violates public policy. As such, Student's request for reconsideration is denied.

MOTION FOR LEAVE TO AMEND COMPLAINT

Student argues she did not understand that she had the right to appeal the expulsion, and now requests to add the appeal as an issue. OAH considers Student's request a Motion for Leave to Amend the Complaint.

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).)

Student's request for leave to amend her complaint is granted. Student is encouraged to use the Request for Mediation and Due Process Hearing form on OAH's website at https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Forms/Request-for-Mediation-and-Due-Process-Hearing-Form. The website and form include instructions on identifying issues and including facts to support each issue.

Additionally, a parent who is not represented by an attorney may request that OAH provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint. (Ed. Code, § 56505.) Parents are encouraged to work with a mediator assigned by OAH for assistance if they intend to amend their due process hearing request. The mediator may not provide legal advice but may assist parents to ensure compliance with requirements in order to proceed with mediation and due process. Student may contact OAH if she would like mediator assistance with amending her complaint.

Student must file the amended complaint no later than five days before the due process hearing, currently scheduled to start on May 23, 2023. The amended complaint will reset all applicable timelines and OAH will issue a scheduling order with the new dates. Student is encouraged to review the complaint filed by her former attorney and to include in her amended complaint all issues she seeks to bring in the due process hearing. Student may omit any issues raised by her former attorney that she believes no

longer are at issue and may add any issue under OAH's jurisdiction that was not raised previously, including the appeal of any expulsion. Irvine retains the right to file any motions challenging the sufficiency of the issues in Student's amended complaint and to move to dismiss any issues it believes are improper or outside OAH's jurisdiction.

ORDER

1. Student's request for reconsideration is denied.
2. Student's Motion for Leave to Amend the Complaint is granted. Student may file an amended complaint at any time prior to five days before the due process hearing. The amended complaint should include all issues for the due process hearing that are within OAH's jurisdiction.
3. Student may contact OAH if she requires mediator assistance with amending her complaint, at (916) 263-0550.

Cararea Lucier

Cararea Lucier
Administrative Law Judge
Office of Administrative Hearings