BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

BELLFLOWER UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2019060636

ORDER GRANTING MOTION TO AMEND COMPLAINT

On June 14, 2019, Student filed a Due Process Hearing Request, referred to as a complaint, with the Office of Administrative Hearings, naming Bellflower Unified School District. The Office of Administrative Hearings is referred to as OAH. On July 5, 2019, OAH granted the parties' first joint request for a continuance of the due process hearing. On October 8, 2019, OAH granted the parties' second joint request for a continuance of the due process hearing, due to independent educational evaluations at public expense that were in process at the time. The parties represented the evaluations could be dispositive and lead to resolution of the issues in Student's complaint. OAH cautioned the parties that because this case was filed in June 2019, and the Individuals with Disabilities Education Act mandates speedy resolution of these cases, OAH did not contemplate granting any further continuances.

On December 12, 2019, Student filed a Motion to Amend the Due Process Hearing Request and an amended complaint. Student asserts the results of the

independent evaluations revealed additional claims against Bellflower that Student wants to have heard at the same time as the original issues he pleaded. No opposition was received from Bellflower.

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).)

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. (Ed. Code, § 56505, subd. (f)(3); 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 or imposing conditions on the continuance; and any other relevant fact or circumstance. (Cal. Rules of Court, rule 3.1332(d).)

Student's motion to amend was filed more than five days prior to the due process hearing. Therefore it is timely.

This case is more than six months old and concerns individualized education programs dating back as far as November 29, 2017. Many amendments to Student's complaint only concern the evidence Student intends to present to prove the previously alleged claims, and regarding remedies. These amendments do not relate to adding claims regarding any substantive denial of a free appropriate public education beyond the allegations in the original complaint. However, Student's amended complaint also now alleges procedural violations of the Individuals with Disabilities Education Act and includes new claims that those procedural violations denied Student a free appropriate public education. Some procedural claims involve more recent events, but Student has stated a new claim regarding failure to implement Student's November 29, 2017 individualized education program. Therefore, Student's motion to amend is granted. 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.

The parties are advised that due to the age of this case, no further continuances will be granted absent a showing of exceptional cause.

IT IS SO ORDERED.

DATED: December 18, 2019

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Kara Hatfield
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Kara Hatfield
Administrative Law Judge
Office of Administrative Hearings