

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CUPERTINO UNION SCHOOL
DISTRICT.

OAH CASE NO. 2011070771

ORDER DENYING REQUEST TO
ADVANCE HEARING DATES

On September 9, 2011, Student filed a request to advance the scheduled October 10, 2011 due process hearing date set for this case. Also on September 9, 2011, District filed an opposition to the motion.

Student contends that the hearing should be advanced because his hearing has been delayed by two notices of insufficiency filed by the District and sustained by OAH and that he will regress if the hearing date is not advanced. District contends that any delay was caused by Student's failure to file a sufficient complaint.

APPLICABLE LAW

In order to proceed to hearing, Student must file a due process hearing complaint that comports with the requirements of federal law. The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of Title 20 United States Code section 1415(b)(7)(A). A complaint is sufficient if it contains: (1) a description of the nature of the problem of the child relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education (FAPE) to the child; (2) facts relating to the problem; and (3) a proposed resolution of the problem to the extent known and available to the party at the time. These requirements prevent vague and confusing complaints, and promote fairness by providing the named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.

A local educational agency (LEA) is required to convene a meeting with the parents and the relevant members of the Individualized Education Program (IEP) team within 15 days of receiving notice of the Student's complaint. (20 U.S.C. § 1415(f)(1)(B)(i)(I); 34 C.F.R. § 300.510(a)(1).) After the resolution session is convened, the parties have up to the 30th day from the day of filing to resolve the matter. The resolution session need not be held if it is waived by both parties in writing or the parties agree to use mediation. (34 C.F.R. § 300.510(a)(3) & (b).) A due process hearing must be conducted and a decision rendered within 45 days of the expiration of the time to conduct the resolution session, unless an

extension is granted for good cause. (34 C.F.R. §§ 300.510(b) & 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).)

DISCUSSION

Student's initial due process complaint was filed on July 22, 2011. On August 1, 2011, District filed a Notice of Insufficiency (NOI). OAH found Student's complaint insufficient on August 1, 2011 and all dates were vacated pending the filing of an amended complaint. On August 12, 2011, Student filed an amended complaint. On August 22, 2011, District filed a second NOI. Also on August 22, 2011, OAH found Student's amended complaint partially insufficient. The August 22, 2011 order provided that Student had the option to proceed to hearing on the one sufficient issue or to amend his complaint within 14 days and restart the applicable timelines. Student chose to file a second amended complaint on September 6, 2011. The filing of the second amended complaint restarted the applicable time lines resulting in a new October 11, 2011 hearing date.

The parties have neither completed nor waived a resolution session and Student does not wish to participate in mediation. A telephonic prehearing conference is scheduled on October 5, 2011 and one day due process hearing is scheduled on October 11, 2011. The due process hearing on this case is scheduled within a reasonable time and within the 45 day time line set forth in federal law. Student has failed to state good cause to advance the hearing date. Student asserts that he will regress if the hearing is not advanced. To the extent that Student prevails at hearing and regression is shown at hearing, an order of compensatory education/ services or equitable relief may be granted by OAH to the extent appropriate. As an additional factor, District opposes advancing the hearing date and on September 15, 2011 filed a third notice of insufficiency and motion to dismiss as to the second amended complaint which may impact the case status and hearing date.

Good cause does not exist to advance the hearing date under these circumstances.

ORDER

The request to advance the hearing date is denied.

Dated: September 20, 2011

/s/

GLYNDA B. GOMEZ
Administrative Law Judge
Office of Administrative Hearings