

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LINCOLN UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2011090998

ORDER EXTENDING TIME TO
AMEND COMPLAINT AND
GRANTING AND DENYING
CONTINUANCES AND OTHER
REQUESTS FOR RELIEF

On October 11, 2011, Student's advocate filed an opposition to the District's Motion to Dismiss (which will be addressed in a separate Order). Attached as an Exhibit to the opposition was a letter from Student's Father making additional argument and seeking additional relief. Although this method of pleading is improper, OAH will address these requests. However, Father and his advocate, Dr. Robert Closson, are admonished that further pleadings in that form will not be accepted for filing. Dr. Closson represents Father for all purposes in this matter, and all advocacy and requests for relief should be made only by him. Student's arguments must be presented by one clear voice. Any further separate pleading from Father, whether attached as an exhibit to a pleading filed by Dr. Closson or not, will not be filed and will be disregarded.

It also appears that Student's opposition was improperly filed, as it failed to include a proof of service. The District asserts, without contradiction, that neither a signed copy of the opposition nor its exhibits were served by Student on the District. The District obtained the pleading from OAH the next day and was able to file a response on October 13, 2011 and does not oppose consideration of the merits of the requests. The defect will be therefore overlooked in this instance. However, Father and his advocate are further admonished that no further document from Student will be accepted for filing without an adequate proof of service showing that the entire pleading, including exhibits, was served on the District the same day it was filed.

Request to Extend Time for Amending Nonexpedited Issues in Complaint

The complaint was filed on September 27, 2011, by Father acting in pro per. On September 30, 2011, OAH sustained Notice of Insufficiency (NOI) as to the nonexpedited issues in the complaint, and gave Father 14 days to amend it. Father now seeks to extend that time for a reasonable period. The District opposes such an extension.

An expedited due process hearing on a disciplinary matter must occur within 20 school days of receipt of the due process complaint. (20 U.S.C. § 1415(k)(4)(B).) There is

no provision of law authorizing the continuance of an expedited hearing. A nonexpedited due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless a continuance is granted, and continuance of the hearing may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f)(3); 34 C.F.R. § 300.515(a)(2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) In ruling upon a motion for continuance, OAH is guided by the provisions found within the Administrative Procedure Act and the California Rules of Court that concern motions to continue. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, rule 3.1332 .) Generally, continuances of matters are disfavored. (Cal. Rules of Court, rule 3.1332(c).)

Good cause exists to allow Student additional time to amend his complaint. The matter is complex, Father is homeless and pursuing several avenues of relief at once, and Father obtained an advocate only on October 7, 2011. There is outstanding from the San Joaquin County Superior Court a Temporary Restraining Order (TRO) barring Student from any District campus, which expires on October 24, 2011, at 10:30 a.m., three hours before the scheduled expedited hearing is calendared to begin. At 10:30 a.m. on that day, the Superior Court will hear a motion for a preliminary injunction granting similar relief. Its order, if any, may significantly alter the facts to be pleaded and the applicable law.

The District's opposition to the request states only that it is entitled to speedy resolution, and that Student should not be allowed to delay the matter "further." The District does not identify any previous delay by Student not occasioned by its own NOI, and does not argue that any specific prejudice would result from granting the request. For the above reasons, and because leave to amend should ordinarily be liberally granted, Student's time to amend the nonexpedited issues in his complaint will be extended to 14 days after the Superior Court hearing.

Request for Mediator to Assist in Amending Complaint

Father also requests that a mediator be appointed to assist him in amending his complaint. The District takes no position on the request. Pursuant to Education Code section 56505, subdivision (e)(6), OAH will appoint a mediator for that purpose.

Request for Continuance of Expedited Hearing

Father also requests a continuance of one or two days of the expedited hearing now calendared for 1:30 p.m. on October 24, 2011. The District opposes the request only on the generic ground that it is entitled to speedy resolution, but does not explain why a delay of one or two days would cause any particular prejudice to its interests. In any event, in compliance with the requirement that an expedited hearing must occur within 20 school days of the receipt of the complaint, the matter can only be continued for one school day

Good cause exists to grant a one-day continuance. The expedited hearing is now set scheduled to begin in the afternoon of October 24, 2011, and the preliminary injunction hearing in the Superior Court is set for 10:30 that morning. A one-day continuance will

allow the parties time to adjust their positions in the expedited hearing in response to any order the Superior Court may issue, and will conserve the resources of the parties by making it unnecessary to have witnesses at the hearing room waiting for a ruling . It is not known when, on its law and motion calendar, the Superior Court will reach this matter. Conditions will be imposed in order to ensure that the expedited hearing will proceed expeditiously on October 25, 2011.

Father makes a number of other requests. His request to withdraw Issue No. 4 in the expedited hearing is unopposed and is granted. His request for the issuance of subpoenas does not require a motion; subpoenas will be sent to his advocate.

Father requests that Issue 21 in his original complaint be “re-instated by timeline extension which was filed on September 27, 2011.” It is not clear what this language means. Because Student’s time to amend all the nonexpedited issues in his complaint will be extended, there appears no reason why Issue 21 requires special treatment. The District opposes the request on the ground that the issue was previously settled in an earlier due process proceeding, and attaches to its October 13, 2011 opposition a copy of a settlement agreement executed on January 22, 2010 that may support that argument. However, the District made this argument only in its last pleading filed yesterday, and Student has had no opportunity to respond. Student may or may not choose to include the issue in his amended complaint, at which time the District may make an appropriate motion raising its argument again.

Father’s remaining requests concern the service of papers and pleadings in the Superior Court action, and OAH has no jurisdiction to consider them.

ORDER

1. Student’s request to extend his time to amend the nonexpedited issues in his complaint is granted. Student may amend the nonexpedited issues in his complaint by the close of business on November 7, 2011.

2. Student’s request that OAH appoint a mediator to assist him in redrafting the nonexpedited issues in his amended complaint is granted. An OAH mediator will contact Student’s advocate.

3. Student’s request to continue the expedited hearing is granted. The hearing is continued to 2:00 p.m. on October 25, 2011, on the following conditions:

a. At the conclusion of the October 24, 2011 hearing in the Superior Court on a preliminary injunction, the parties shall notify OAH immediately of the outcome and shall immediately furnish to OAH by facsimile a complete copy of any order that the Superior Court may have entered, as soon as it is available to them.

b. On October 24, 2011, as soon as possible after the conclusion of the Superior Court hearing, the parties shall meet and confer about the effect any order issued by the court may have on the expedited hearing, shall notify OAH by the close of business of any agreement they may reach that affects the expedited hearing, and shall provide to OAH by facsimile a copy of any written agreement they reach.

c. The parties shall attend a telephonic status conference at 10:00 a.m. on October 25, 2011, unless the request for expedited hearing is withdrawn before that time or has been ruled moot. OAH will initiate the call.

4. Student's request to withdraw Issue No. 4 in the expedited hearing is granted. His request for an extension of time to re-plead nonexpedited issue No. 21 is denied as unnecessary. His remaining requests concerning service of papers and pleadings in the Superior Court action are denied for lack of jurisdiction.

5. All future pleadings and papers filed by Student in this matter shall be filed by Student's advocate. No separate or supplementary pleadings or requests from Father will be considered as long as he is represented by an advocate or attorney.

6. No further document from Student will be accepted for filing in this matter without an adequate proof of service showing that the entire pleading, including exhibits, was served on the District the same day it was filed.

Dated: October 14, 2011

/s/

CHARLES MARSON
Administrative Law Judge
Office of Administrative Hearings