

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

WALNUT VALLEY UNIFIED SCHOOL  
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2013110878

ORDER GRANTING DISTRICT'S  
MOTION TO AMEND COMPLAINT;  
GRANTING DISTRICT'S REQUEST  
FOR CONTINUANCE; AND DENYING  
PARENT'S REQUEST FOR  
MEDIATOR ASSISTANCE IN THIS  
CASE

On November 25, 2013, Walnut Valley Unified School District (District) filed a Due Process Hearing Request (complaint), naming Student as the respondent. The sole issue concerned whether District's assessments of Student in the spring of 2013 were appropriate. On February 14, 2014, District filed a request to amend the complaint and a proposed amended complaint. The amended complaint narrowed the scope of the assessments at issue and added an issue about whether District properly concluded Student was not eligible for special education. District also requested that the hearing be continued to dates in April of 2014.

On February 20, 2014, Student filed a request to change the date of the prehearing conference and hearing to dates in March of 2014. In addition, parent requested: 1) to hold the hearing in a neutral location; 2) that the due process hearing be recorded and that they receive a copy; and 3) that "OAH assign a mediator to work with us on this case." On February 20, 2014, District filed a response and partial opposition to Student's suggested hearing dates.

This Order: 1) Rules on District's Motion to Amend the Complaint; 2) Rules on both parties' requests to continue the matter; 3) Addresses Parent's request to hold the hearing in a neutral location and to record it; and 4) Addresses Parent's request to appoint a mediator to assist them in this case.

*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. §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).)

Here, the motion to amend was timely, and seeks to narrow one issue while adding another issue. Student did not file an opposition to the motion to amend, and both parties are requesting the matter be continued.

In light of the above, the motion to amend is timely and is granted. The amended complaint shall be deemed filed on the date of this order, February 21, 2014. All applicable timelines shall be reset as of the date of this order. OAH will issue a scheduling order with the new dates, consistent with other parts of this Order.

### *Continuance*

District has requested a continuance of the hearing dates if its motion to amend has been granted. Student was requesting a continuance of the existing hearing date before the amended complaint was deemed filed.

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).)

Here, Students' request for a continuance of the existing dates is not at issue any more because District's motion to amend has been granted, which requires all dates to be reset. Even if Student's dates were used, they would likely not give Student sufficient time to prepare for hearing now that the complaint has been amended. In its motion, District notes that it is on spring break the first week of April, and that its counsel is available the week of April 21, 2014. Accordingly, District's motion to continue is granted based on the good cause reason of unavailability and allowing the parties sufficient time to prepare for hearing on a new issue.

This matter will be set as follows: Mediation on March 20, 2014 at 9:30 a.m. (Mediation is voluntary and may be cancelled if the parties are not interested); Telephonic Prehearing Conference on April 14, 2014 at 1:00 p.m., Due process hearing on April 21-24, 2014 at 1:30 p.m. first day, 9:00 a.m. other days, and continuing day to day, Monday through

Thursday, at the discretion of the administrative law judge hearing the matter. OAH will also issue a scheduling order with these dates.

*Parent Requests for Neutral Hearing Location and that Hearing be Recorded*

Parent is requesting a “neutral” hearing location, and in reply, the District is offering “Hart Center,” a District property not located at the District’s office or SELPA office.

Hearings are required to be held at a place “reasonably convenient” to the parent. (Ed. Code, § 56505, subd. (b).) OAH sets hearings at school districts because generally that is “reasonably convenient” to parents in school districts outside of the City of Los Angeles. Here, if Parents would like to change the location, that request should be raised as part of the telephonic prehearing conference. The closest OAH office would be downtown Los Angeles. In sum, the issue of the hearing location is reserved for the prehearing conference. Parents are encouraged to consider in advance of the prehearing conference whether they can agree to the “Hart Center,” or some other location in their community.

As to Parents’ request that the hearing be recorded, all OAH hearings are electronically recorded, and parents are entitled to a written or electronic transcript at the conclusion of the hearing.

*Assignment of a Mediator*

Parent is requesting that OAH assign a mediator to assist them with this case. However, mediator assistance is only available to parents who are not represented by an attorney when the parent is filing their own due process hearing request and the complaint is found to lack sufficient notice of the issues. The Education Code provides for mediator assistance “to assist the parent in identifying the issues and proposed resolution of the issues” meaning the issues a parent wants to seek a due process hearing on. (Ed. Code, § 56505, subd. (e)(6).) This section of the Education Code is what is referred to on OAH’s web site. Neither the IDEA, nor the Education Code, provide for mediator assistance to parents when a school district is requesting a due process hearing. Instead, when, as here, a school district has filed the request, Parents should consult the numerous resources on the OAH website, such as the parent guide, the attorney and advocate list, links to other sources of law, and listing of free or low cost attorneys or advocates. Accordingly, Parent’s request for mediator assistance must be denied.

*Reminder Regarding Service of Documents*

District and Parents are reminded that they are required to “serve” each other with all documents filed with OAH. In other words, if a document is filed with OAH, it should include a statement that the document was “served” on the other side, the date served, and describe how it was done, meaning for example mail, fax, or personal delivery.

IT IS SO ORDERED.

DATE: February 20, 2014

/s/

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RICHARD T. BREEN  
Presiding Administrative Law Judge  
Office of Administrative Hearings