

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

SACRAMENTO CITY UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2014040297

ORDER DENYING MOTION TO
AMEND COMPLAINT

On April 4, 2014, Student filed a due process hearing request (complaint), naming the Sacramento City Unified School District. On October 21, 2014, Student filed a motion to amend the complaint along with an amended complaint. No opposition was received from Sacramento. This order determines that Student's motion to amend her complaint is denied for failure to establish good cause to continue the hearing set to begin on November 12, 2014.

APPLICABLE LAW

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).) This results in a continuance of the case.

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).)

ANALYSIS AND ORDER

Student's request for a due process hearing (complaint) was filed with OAH on April 4, 2014. On May 22, 2014, the parties obtained an initial continuance of the matter in connection with an OAH mediation, and scheduled a hearing to begin on September 30, 2014. On September 17, 2014, Sacramento and Student filed a joint request for a continuance, representing that due to a new administration in the district, both parties required more time to meaningfully negotiate a settlement in advance of preparing for hearing. On September 18, 2014, OAH granted the continuance, and provided in the written order that no further continuance would be permitted to facilitate settlement negotiations. On October 13, 2014, Sacramento moved to change the venue for hearing in this case, and on October 14, 2014, Student filed a non-opposition. At no time since April 2014, has Student notified OAH of any necessity to amend her complaint.

Student's attorney represents in her argument that new information has been received regarding the lack of an assistive technology specialist in Sacramento since May 2014, and new issues have arisen with respect to the new 2014-2015 school year. Student's proposed amended complaint alleges that on May 14, 2014, following the filing of the complaint, Sacramento conducted an assistive technology assessment and held an IEP team meeting on May 9, 2014, at which it agreed to offer such services. The amended complaint avers that since that time, Sacramento has failed to implement the services and has continued to deny her a free appropriate public education in other respects as well. In addition, the amended complaint indicates that in September 2014, Student was privately assessed and Sacramento continues to deny her a FAPE. Student has provided no explanation for waiting until two weeks prior to the upcoming hearing to amend her complaint.

The ALJ has considered the arguments, the pleadings filed to date, and the facts and circumstances of this case. Student has not established good cause to belatedly amend her complaint, or continue the hearing for the third time, which is the net result from granting her motion to amend. Student's original complaint already contains an issue that Sacramento failed to offer or provide her with assistive technology as a related service, and failed to assess her in all areas of unique needs related to her disability. Student's after-acquired evidence of an assistive technology assessment, as well as a private assessment, may be relevant to her case. Student's proposed amended complaint does not claim that the assistive technology assessment was legally deficient, but claims that the May 2014 IEP team meeting was procedurally defective. However Student fails to explain why she did not move to amend the complaint to add this many months ago.

It is generally the case that disputes between school districts and parents may continue from year-to-year. However that does not justify continuing due process proceedings to encompass all new issues that arise, particularly in light of the law's mandate for a speedy resolution to each problem. Student's issues for the 2014-2015 school year may easily be handled in a separate hearing, as the law contemplates. Accordingly, Student's motion to amend her complaint is denied.

DATE: October 30, 2014

/s/

DEIDRE L. JOHNSON
Administrative Law Judge
Office of Administrative Hearings