

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LAS VIRGENES UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2014100733

ORDER FOLLOWING PREHEARING
CONFERENCE; DENYING MOTION
TO AMEND COMPLAINT;
CONTINUING PREHEARING
CONFERENCE AND CONFIRMING
HEARING DATES

On March 16, 2015, Administrative Law Judge Adrienne L. Krikorian, Office of Administrative Hearings, held a telephonic prehearing conference. Attorney David German appeared on Student's behalf. Attorneys Wes Parsons and Siobahn Cullen appeared on behalf of Las Virgenes Unified School District. The PHC was recorded.

Based on discussion of the parties, the ALJ issues the following order:

1. Motion to Amend Student's complaint. Student filed an amended complaint accompanied by a joint stipulation with District on March 12, 2015, which OAH will consider a motion to amend the 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)(II).) The filing of an amended complaint restarts the applicable timelines for the due process hearing. (§1415(f)(1)(B).)

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).)

Student's original complaint was filed on October 15, 2015. OAH granted a joint request for continuance on October 28, 2015, setting the hearing for February 17, 2015. The parties participated in mediation on December 11, 2014. On February 3, 2015, the parties filed a second request to continue the dates, claiming that assessments of Student were ongoing but not completed. The parties argued that the continuance would allow the parties to hold an individualized education program and mediate the case considering information from recent assessments. OAH granted the request and set the prehearing conference for March 16, 2015, and the due process hearing for March 24-26, 2015.

Student's original complaint alleges the issue of whether District failed to find Student eligible for special education from and after the fall of 2012 before her parents privately placed her in a residential treatment center, failing to appropriately assess her, and denying her a free appropriate public education by not offering special education placement, supports and services from and after fall of 2012, including during the spring of 2014 and for the 2014-2015 school year when she returned to the District. The complaint seeks reimbursement for private placement between December 2012 and December 2013, and for the 2014-2015 school year.

The Amended Complaint adds factual allegations pertaining to District's alleged continued failure to identify Student as eligible for special education at her March 5, 2015 re-evaluation IEP, following a March 3, 2015 psychoeducational assessment by District.

Allowing Student to file an amended complaint on the eve of the hearing on an issue that was or should have been ready for hearing when the original complaint was filed would result in resetting all timelines. Student's original case would be more than six months old before a decision is issued, which is contrary to public policy and not what Congress intended when it established due process timelines under the IDEA, particularly here where the original complaint seeks damages back to the 2012-2013 school year. Student has not demonstrated that either the Student's right to a speedy disposition or judicial economy will be served by further delaying this matter when the core issue, namely eligibility, is the same issue raised in the original complaint. Student has not challenged the validity of the March 3, 2015 psychological assessment in the amended complaint, but instead has challenged the District's continued finding based upon those results that Student is not eligible for special education.

Accordingly, the motion to amend Student's complaint is denied. The consolidated matter will proceed to hearing as set forth below.

2. Hearing Dates, Times, and Location.

The parties have not filed pre-hearing conference statements. Accordingly, the pre-hearing conference is continued to Friday, March 20, 2015 at 10:00 a.m. The parties shall file their prehearing conference statements in compliance with the original scheduling order in this matter no later than 4 p.m. on Thursday, March 19, 2015. They shall timely exchange exhibits and witness lists in compliance with Education Code section 56505, subd. (3) & (7), unless they agree otherwise. Failure to do so may result in exclusion of witnesses and or exhibits at the hearing.

The hearing shall take place on March 24, 25, and 26, 2015 at the District's offices located at 4111 North Las Virgenes Road, Calabasas, California 91302. The hearing shall begin at 9:30 a.m. the first day of the hearing and at 9:00 a.m. all other days unless otherwise ordered.

The school district shall provide a facility for the hearing that fully complies with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Rehabilitation Act of 1973 (29 U.S.C. § 794.), the Unruh Civil Rights Act (Civ. Code, § 51 et seq.), and all laws governing accessibility of government facilities to persons with disabilities.

The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure that the witnesses will be available to testify. A witness will not be regarded as unavailable for purposes of showing "good cause" to continue the hearing if the witness is not properly notified of the hearing date or properly subpoenaed, as applicable.

All other prehearing conference matters will be addressed at the PHC on Friday, March 20, 2015.

3. Settlement. The parties are encouraged to continue working together to reach an agreement before the due process hearing. The parties shall inform OAH in writing immediately should they reach a settlement or otherwise resolve the dispute before the scheduled hearing. In addition, if a settlement is reached within five days of the scheduled start of the due process hearing, the parties shall also inform OAH of the settlement by telephone at (916) 263-0880, by speaking to a staff member in person.

IF A FULL AND FINAL WRITTEN SETTLEMENT AGREEMENT IS REACHED AFTER 5:00 P.M. THE DAY PRIOR TO HEARING, THE PARTIES SHALL LEAVE A VOICEMAIL MESSAGE REGARDING THE SETTLEMENT AT (916) 274-6035. THE PARTIES SHOULD ALSO LEAVE CONTACT INFORMATION SUCH AS CELLULAR PHONE NUMBERS OF EACH PARTY OR COUNSEL FOR EACH PARTY. THE PARTIES SHOULD SIMULTANEOUSLY FAX THE SIGNATURE PAGE OF THE SIGNED AGREEMENT OR A LETTER WITHDRAWING THE CASE TO THE OAH AT THE FAXINATION LINE at 916-376-6319.

Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received by OAH. If an agreement in principle is reached, the parties should plan to attend the scheduled hearing unless different arrangements have been agreed upon by the assigned ALJ. The assigned ALJ will check for messages the evening prior to the hearing or the morning of the hearing.

If the matter settles subject to board approval, in addition to a signed copy of the signature page of the settlement agreement as noted above, the parties shall submit a request for a status conference and provide the date of the next board meeting. The hearing dates will not be cancelled without this information.

IT IS SO ORDERED.

DATE: March 16, 2015

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings