

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. NEWPORT-MESA UNIFIED SCHOOL DISTRICT	OAH Case No. 2015060258
NEWPORT-MESA UNIFIED SCHOOL DISTRICT , v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2015050246 ORDER GRANTING MOTION TO AMEND COMPLAINT; ORDER GRANTING CONTINUANCE

On May 06, 2015, District filed a Due Process Hearing Request (complaint), naming Student. On June 10, 2015, the Office of Administrative Hearings granted Student’s motion to consolidate Student’s and District’s cases and designated Student’s case as the primary case. On July 9, 2015, District filed a Motion to Amend the Due Process Hearing Request (amended complaint) and for a continuance to the dates set forth in the June 10, 2015 consolidation order. No opposition was received from Student.

Motion to Amend

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).)¹ The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. §1415(c)(2)(E)(ii).)

The motion to amend is timely and is granted. The amended complaint shall be deemed filed on the date of this order.

¹ All statutory citations are to title 20 United States Code unless otherwise indicated.

Continuance Request

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).)

District has also requested that the due process hearing dates, as previously determined pursuant to the Order Granting Consolidation of Cases, be maintained as scheduled. Good cause exists for maintaining the existing due process dates, as mediation has been rescheduled, and the hearing is currently set for late September 2015. Further, as the granting of District's motion to amend reset the timelines in the consolidated matter, District's case is now the primary case in the consolidated matter.

Therefore, the matter remains set as follows:

Prehearing Conference: September 4, 2015, at 10:00 a.m.

Due Process Hearing: September 15, 16, and 17, and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge. The hearing shall begin at 9:30 a.m. on the first day of hearing, and at 9:00 a.m. on all other days, unless otherwise ordered.

IT IS SO ORDERED.

DATE: July 20, 2015

/s/

JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings

