

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

CAPISTRANO UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT,

OAH Case No. 2016030010

PARENT ON BEHALF OF STUDENT,

v.

CAPISTRANO UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2016020203

ORDER GRANTING MOTIONS TO
AMEND COMPLAINT, CONSOLIDATE
MATTERS AND CONTINUE THE DUE
PROCESS HEARING, SETTING DATES
AND DENYING MOTION TO DISMISS

MOTION TO AMEND

On February 26, 2016, Capistrano Unified School District filed a Due Process Hearing Request (complaint) with the Office of Administrative Hearings, naming Student. On March 1, 2016, Capistrano filed a Motion to Amend the Due Process Hearing Request and an Amended Request for Due Process Hearing (amended complaint). No opposition was received from Student.

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).)

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

MOTION TO CONSOLIDATE AND CONTINUE

Consolidation

On January 29, 2016, Student filed a Request for Due Process Hearing in OAH case number 2016020203 (Student's Case), naming Capistrano.

On February 26, 2016, Capistrano filed a Request for Due Process Hearing in OAH case number 2016030010 (Capistrano's Case), naming Student.

On March 1, 2016, Capistrano filed a Motion to Consolidate Capistrano's Case with Student's Case and Continue the Due Process Hearing. On March 2, 2016, Student filed an Opposition to the motion.

Although no statute or regulation specifically provides a standard to be applied in deciding a motion to consolidate special education cases, OAH will generally consolidate matters that involve: a common question of law and/or fact; the same parties; and when consolidation of the matters furthers the interests of judicial economy by saving time or preventing inconsistent rulings. (See Gov. Code, § 11507.3, subd. (a) [administrative proceedings may be consolidated if they involve a common question of law or fact]; Code of Civ. Proc., § 1048, subd. (a) [same applies to civil cases].)

Here, Capistrano's Case and Student's Case involve the same parties, the same time period, and a common question of law or fact. Student asserts, in part, that Capistrano denied Student a FAPE by failing to offer transportation services since November 1, 2014. Student provides related facts describing the discussion of transportation at the January 2016 IEP team meeting. Student also asserts procedural violations related to the January 16, 2016 IEP team meeting. Capistrano seeks an order finding that its January 16, 2016 IEP offer constitutes a FAPE. The analysis of these issues will require similar factual findings related to the January 16, 2016 IEP team meeting and offer and whether transportation services are necessary to providing Student a FAPE. The issues presented, while not identical, are sufficiently intertwined that consolidation is appropriate. In addition, consolidation furthers the interests of judicial economy because the matters will likely involve many of the same documents and witnesses.

Student opposes consolidation, asserting that consolidation may not occur until Capistrano's complaint is deemed sufficiently pled. Student asserts that she is not waiving her right to file a notice of insufficiency and has until March 11, 2016, to do so. Student provides no authority for this proposition. Consolidation of these matters does not prevent Student from subsequently filing a timely notice of insufficiency. Accordingly, consolidation is granted.

Continuance

Capistrano requests a continuance of the due process hearing in the consolidated matters to May 31, 2016, based on the unavailability of Capistrano's counsel. Capistrano supports this request with a declaration by counsel setting forth dates that counsel is scheduled for mediation and due process hearings in other matters pending before OAH.

Student opposes a continuance because Student's witnesses have already arranged to be available the week of the due process hearing and because of the resulting delay to Student's rights to due process and an appropriate education.

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).)

OAH has reviewed the request for continuance based on good cause and considered all relevant facts and circumstances. Capistrano has established good cause to continue the matter. The request is granted. All dates in the consolidated matters are vacated. This matter will be set as follows:

Prehearing Conference: May 23, 2016 at 10:00 AM

Due Process Hearing: May 31, 2016, at 1:30 PM and continuing day to day at the discretion of the Administrative Law Judge presiding at the hearing

MOTION TO DISMISS

On February 26, 2016, Capistrano filed a complaint with OAH, naming Student. On March 1, 2016, Capistrano filed an amended complaint. On March 7, 2016, Student filed a

Motion to Dismiss Issue Two, alleging that Issue Two falls outside of the jurisdiction of OAH. OAH received no response to the motion to dismiss from Capistrano.

In Issue Two of Capistrano's complaint, Capistrano contends that its "February 8, 2016 response to Student's request for due process hearing was appropriate and met all of the requirements of state and federal law such that the CDE Complaint is withdrawn and the District does not need to conduct an investigation or provide a response to the CDE complaint." Issue Two of Capistrano's amended complaint is different and asks OAH to determine whether its February 8, 2016 response to Student's request for due process violated any procedural requirements and thereby denied Student a FAPE.

Because this Order grants Capistrano's Motion to Amend, Student's Motion to Dismiss Issue Two of the complaint is denied as moot. Student is not precluded from filing a motion to dismiss issues in the amended complaint.

ORDER

1. Capistrano's Motion to Amend is granted. The amended complaint shall be deemed filed on the date of this order.
2. Capistrano's Motion to Consolidate and Continue the Due Process Hearing is granted.
3. The 45-day timeline for issuance of the decision in the consolidated cases shall be based on the date of the filing of the amended complaint in OAH Case Number 2016030010 (Capistrano's Case).
4. All dates previously set in OAH Case Numbers 2016020203 (Student's Case) and 2016030010 (Capistrano's Case) are vacated.
5. The prehearing conference shall be held on May 23, 2016, at 10:00 a.m., and the due process hearing shall begin on May 31, 2016, at 1:30 p.m., and continue day to day at the discretion of the ALJ presiding at the hearing.
6. Student's Motion to Dismiss Issue Two is denied as moot.

DATE: March 10, 2016

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Lisa Lunsford
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LISA LUNSFORD
Administrative Law Judge
Office of Administrative Hearings

