

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

MORGAN HILL UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2009061085

ORDER GRANTING MOTION TO
AMEND COMPLAINT

On August 10, 2009, a telephonic prehearing conference (PHC) commenced before Administrative Law Judge (ALJ) Deidre L. Johnson, Office of Administrative Hearings (OAH). Linda and Greg McNulty (Parents) appeared on behalf of Student. Tracy L. Tibbals, Attorney at Law, appeared on behalf of the District. The PHC was recorded.

On August 5, 2009, Student filed PHC statement that included a motion to file an amended Due Process Complaint Notice (complaint). During the PHC, the District opposed the motion.

APPLICABLE LAW AND DISCUSSION

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 days prior to the due process hearing. (20 U.S.C. §1415(c)(2)(E)(i)(II); Ed. Code §56502, subd. (e).) The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. §1415(c)(2)(E), Ed. Code §56502, subd. (e).)

Hearing in this matter is set for August 17, 2009. Student's motion was filed more than five days prior to the due process hearing, and is therefore timely. The motion is not supported by a proposed amended complaint. However, Student's original complaint made historical reference to many matters that Parents now contend should be issues identified for hearing. By order dated July 17, 2009, OAH upheld the sufficiency of Student's original complaint based on only one issue for hearing: the appropriateness of the District's April 20, 2008, individualized education program (IEP), as amended on June 2, 2008. By order dated

July 28, 2009, OAH denied the District's motion for clarification, and noted that Student could file a motion to amend the complaint to include additional issues for hearing.

Student's request to amend is reasonable and in the interest of judicial economy. Student's additional issues prior to the April-June 2008 IEP (such as problems with the District's 2007 IEP offers that were historically described in the original complaint), and additional issues arising in connection with the 2008 IEP (such as procedural violations involving prior written notice and denial of Parents' meaningful participation), should properly be litigated in one hearing. It would be inefficient to have a separate case and separate hearing on the new issues since they overlap and expand upon the Student's prior issues. Accordingly, Student's motion to amend the complaint was granted during the PHC. Based upon the granting of the amended complaint, the PHC was discontinued and will be rescheduled.

This order does not address the substance or sufficiency of Student's proposed amended complaint. Since all timelines will start over, both parties retain all rights and obligations applicable on the filing of a complaint.

ORDER

1. Student's motion to amend the complaint is granted. The amended complaint shall be filed on or before 5:00 p.m. on Friday, August 14, 2009.
2. All timelines shall start over commencing on the filing of the amended complaint.
3. The hearing date of August 17, 2009, previously scheduled in this matter is vacated. After the amended complaint is filed, OAH will issue a scheduling order reflecting the new dates.

Dated: August 10, 2009

/s/

DEIDRE L. JOHNSON
Administrative Law Judge
Office of Administrative Hearings