

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

DRY CREEK JOINT ELEMENTARY  
SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2011090491

ORDER DENYING REQUEST FOR  
RECONSIDERATION

On January 30, 2012, the undersigned administrative law judge issued an order granting Dry Creek Joint Elementary School District's (District) motion to amend its complaint in this matter, deeming the amended complaint filed and resetting the 45-day time line to conduct a due process hearing and issue a decision.<sup>1</sup> On February 1, 2012, Student filed a Notice of Procedural Error/Motion to Amend Order asserting that the January 30, 2012 order should be modified to require District to file a motion to amend its complaint and provide Student with an opportunity to oppose the amendment to the complaint. This will be treated as a motion for reconsideration. The Office of Administrative Hearings (OAH) did not receive a response from District.

APPLICABLE LAW

OAH will generally reconsider a ruling upon a showing of new or different facts, circumstances, or law justifying reconsideration, when the party seeks reconsideration within a reasonable period of time. (See, e.g., Gov. Code, § 11521; Code Civ. Proc., § 1008.) The party seeking reconsideration may also be required to provide an explanation for its failure to previously provide the different facts, circumstances or law. (See *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1199-1200.)

DISCUSSION AND ORDER

As the January 30, 2012 order stated, District did not file a "motion to amend" its complaint, but merely filed an amended complaint. It is not uncommon for parties to file an

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<sup>1</sup> The order also denied Student's motion for a continuance of the then set hearing date, because the granting of the filing of the amended complaint vacated the then set hearing date. Student sought a continuance of this matter to June 2012.

amended complaint, unaccompanied by a formal motion to amend. OAH treats this as a “motion to amend” and an amended complaint. Student’s primary contention in seeking reconsideration is that Student was denied an opportunity to oppose a “motion to amend” District’s complaint. Student asserts that District failed to file a “requisite Motion to Amend,” and that “District bypassed the motion process.” Student alleges no new facts, circumstances, or law in support of the request for reconsideration.

The Individuals with Disabilities Education Act (IDEA) does not set forth a specific motion practice process. (20 U.S.C. §1415.) The IDEA sets forth when a party may amend its complaint, but does not require a specific motion to amend. (20 U.S.C. §1415(c)(2)(E)(i).) Student has provided no legal authority for either the principle that under the IDEA a party is required to file a formal “motion to amend” or that it requires a specific “motion process.”

OAH deems amended complaints, without accompanying motions, as a motion to amend and an amended complaint. This is done so that OAH may examine whether the amended complaint is consistent with the requirements of the IDEA and if proper, issue a formal order that will reset the applicable time lines. OAH follows this procedure regardless of whether the other party in the matter files an opposition.

Here, Student is alleging that he was denied the opportunity to be heard because District’s amended complaint was not accompanied with a formal motion. The facts do not bear this out. First, as the January 30, 2012 order set forth, the amended complaint complied with the requirements set out in the IDEA. Second, Student has failed to provide any factual basis that might have supported a denial of District’s filing of an amended complaint.

Third, the record in this case shows that on November 21, 2011, Student moved for a continuance of this matter. One of the grounds for the continuance was that Student had been informed that District would be filing an amended complaint and Student believed this was good cause for a continuance. Therefore, Student was on notice that District intended to amend its complaint; rather than state opposition to an amendment, Student desired to use it as a ground for a continuance.

Finally, the records in this case further establish that Student has filed multiple motions to dismiss various claims in District’s amended complaint. Therefore, Student has not been denied the opportunity to attack District’s amended complaint.

The above record is set out because OAH is concerned about the contentious manner in which this matter is being litigated. The due process proceedings provided by the IDEA are designed to provide the parties with a forum in which to expeditiously resolve disputes regarding children with disabilities. At this time, the undersigned makes no findings as to whether either party has crossed the line from zealous advocacy to sanctionable conduct. However, the parties would do well to consider their conduct moving forward.

Student has failed to provide any new facts, circumstances, or law in support of the request for reconsideration. Accordingly, the request for reconsideration is denied.

IT IS SO ORDERED.

Dated: February 7, 2012

/s/

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BOB N. VARMA  
Presiding Administrative Law Judge  
Office of Administrative Hearings