

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FAIRFIELD SUISUN UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2012030917

ORDER GRANTING MOTION TO  
AMEND COMPLAINT

On June 4, 2012, Student filed a motion to amend his request for a due process hearing (complaint) filed with the Office of Administrative Hearings (OAH) on March 20, 2012. The motion pertains to Student's nonexpedited case. OAH previously bifurcated and limited the expedited disciplinary issues for a separate hearing. The expedited hearing was held on April 25 through 27, 2012, and a decision was issued on May 11, 2012.

For this nonexpedited case, a prehearing conference (PHC) was held on June 1, 2012, and Student's nonexpedited issues regarding denial of a free appropriate public education (FAPE) were discussed and clarified. The hearing was scheduled for June 11 through 15, 2012. During the PHC, Student discussed possible amendment of his complaint to add FAPE issues regarding the 2010-2011 school year. In addition, in view of District's objection, the ALJ informed Student that he could not litigate issues regarding a new manifestation determination meeting on May 25, 2012, without moving to amend because the meeting occurred after the filing of his complaint and involved a new issue. Student did not make a motion to amend at that time. Student's motion is not accompanied by a proposed amended complaint. District has not filed any response to the motion.<sup>1</sup>

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 § 56402, subd. (e).) The filing of an amended complaint

---

<sup>1</sup> On June 6, 2012, OAH granted the parties' motions for continuance, and the nonexpedited hearing was set for August 28 through 30, and September 4 and 5, 2012.

restarts the applicable timelines for the due process hearing. (§1415(f)(1)(B); Ed. Code § 56502, subd. (e).)

Whether the hearing was to start on June 11, or August 28, 2012, Student's motion to amend was timely made more than five days prior to the hearing. Student's nonexpedited issues were limited in the June 1, 2012, PHC order to exclude any issues for the 2010-2011 school year. Because he is collaterally estopped to relitigate issues decided in the May 11, 2012 Expedited Decision, there were no remaining issues for that school year articulated in Student's complaint. Student's PHC statement contained his proposed new FAPE issues for that school year and District therefore has notice of them even though Student did not file a proposed amended complaint with his motion. District retains the right to challenge the sufficiency of any amended complaint.

In addition, Student's claim of problems about the May 2012 manifestation determination meeting were also discussed during the PHC and District consequently has sufficient notice of them for purposes of this motion. Moreover, District did not file any opposition to the motion. Student's request is reasonable and in the best interests of justice and judicial efficiency because all of his remaining claims should be litigated in one case, if possible. District should not be required to prepare for and defend several hearings involving similar issues and witnesses.<sup>2</sup> Based on the foregoing, Student's motion is granted.

#### ORDER

1. Student may file an amended complaint within 14 days of the date of this order. If he does not, the matter will proceed on the currently scheduled dates as to his original FAPE complaint issues only.

2. Upon the filing of the amended complaint, all applicable timelines shall be reset, and OAH will issue a scheduling order with the new dates.

IT IS SO ORDERED.

Dated: June 12, 2012

/s/

---

DEIDRE L. JOHNSON  
Administrative Law Judge  
Office of Administrative Hearings

---

<sup>2</sup> However, if Student's amended complaint contains an appeal of the May 2012 manifestation determination, that appeal must by law proceed separately on an expedited basis. Consequently, Student may choose whether to file a separate complaint on that issue.

