

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LONG BEACH UNIFIED SCHOOL
DISTRICT AND LOS ANGELES
COUNTY OFFICE OF EDUCATION AND
POMONA UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2012070514

ORDER GRANTING MOTION TO
AMEND COMPLAINT AND
DISMISSING STUDENT'S ISSUE
FOUR

On July 18, 2012, Student filed a Due Process Hearing Request (complaint), naming Long Beach Unified School District (LBUSD) and Los Angeles County Office of Education (LACOE) as respondents. The due process hearing was scheduled for December 10, 2012. On November 21, 2012 Student filed a motion to amend the complaint to add Pomona Unified School District (PUSD) as a party, to add allegations relating to PUSD, and to re-assert as Student's Issue Four previously-dismissed claims that were based on section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), section 1983 of title 42 of the United States Code, the Americans with Disabilities Act of 1990 (42 U.S.C. § 12111 et seq.), and the Unruh Civil Rights Act (Code Civ. Proc., § 51 et seq.)

No opposition to filing of the amended complaint was received from present respondents LAUSD and LACOE. PUSD on November 29, 2012 filed a Notice of Representation, accompanied by a request for leave to file a response to the Motion to Amend on December 3, 2012. While this request is reasonable in light of the delays in obtaining counsel engendered by the Thanksgiving holiday, the administrative law judge finds it will save the OAH and present parties time and expense to rule on the motion to amend in advance of the present parties' December 3, 2012 pre-hearing conference in this matter, and will not prejudice PUSD's opportunity to assert any objections or defenses it may have to the amended complaint. In particular, PUSD is not prejudiced because, without seeking leave to amend, Student could have filed a separate request for a due process hearing naming PUSD as the respondent.

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).) 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. OAH will issue a scheduling order with the new dates.

Order Dismissing Issue Four on OAH Motion

As previously set forth in the Amended Order Granting Motion to Dismiss issued in this matter on August 14, 2012, a student in a special education due process hearing has the right to present a complaint “with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child” (Ed. Code, § 56501, subd. (a).) OAH does not have jurisdiction to entertain claims based on Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), section 1983 of title 42 of the United States Code, the Americans with Disabilities Act of 1990 (42 U.S.C. § 12111 et seq.), or the Unruh Civil Rights Act (Code Civ. Proc. §§ 51 et seq.). Here, the amended complaint repeats the same allegations that were previously dismissed for lack of jurisdiction. Accordingly, Issue Four is dismissed for lack of jurisdiction.

IT IS SO ORDERED.

Dated: November 29, 2012

/s/

ROBERT MARTIN
Administrative Law Judge
Office of Administrative Hearings