

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

SAN MATEO-FOSTER CITY SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2012080913

ORDER DENYING MOTION TO FILE
A COUNTER-COMPLAINT

On August 28, 2012, San Mateo-Foster City School District (District) filed a request for due process hearing (complaint) naming Student, and asked that the Office of Administrative Hearings (OAH) grant it leave to change Student's placement without parental consent.¹

On September 6, 2012, Student sent a document to OAH entitled "counter complaint," which contains the same case number that OAH assigned to the District's complaint, Case No. 2012080913. In that counter-complaint, Student alleges that he requires a functional analysis assessment and behavior intervention plan to deal with his "severe behaviors." OAH has construed this pleading as a motion to file a counter-complaint in the District's action. The District has not filed a response.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education" (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party 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." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 United States Code section 1415(b)(7)(A).

availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.) There is no provision in the IDEA that permits a party named in a complaint to file a “counter complaint,” “counter claim,” or “cross-complaint” using the same case number as an original complaint.

A complaint is sufficient if it contains: (1) a description of the nature of the problem of the child relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child; (2) facts relating to the problem; and (3) a proposed resolution of the problem to the extent known and available to the party at the time.²

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].)

DISCUSSION

The document Student has submitted to OAH and designated as a “counter complaint” may meet the requirements to be designated a new complaint, in which case it would be assigned a new case number. Further, if Student believes the District’s claims and its claims are related, Student may also file a motion to consolidate both cases. However, before OAH can consider a new complaint and motion to consolidate, Student must file a new complaint, leaving the space for the case number blank, and providing all of the information required for a complaint to be sufficient, as described above, as well as a separate motion to consolidate both cases, if Student thinks that is appropriate. Accordingly, Student’s motion to file his “counter complaint” is denied without prejudice.

IT IS SO ORDERED.

Dated: September 18, 2012

/s/

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings

² 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).