

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

BERKELEY UNIFIED SCHOOL  
DISTRICT.

OAH Case No. 2014090112

ORDER FOLLOWING PREHEARING  
CONFERENCE GRANTING MOTION  
TO AMEND COMPLAINT

On October 20, 2014, a telephonic prehearing conference was held before Administrative Law Judge Theresa Ravandi, Office of Administrative Hearings. LaJoyce L. Porter and Deborah R. Jacobson, Attorneys at Law, appeared on behalf of Parent and Student. Jan E. Tomsky, Attorney at Law, appeared on behalf of the Berkeley Unified School District (Berkeley). The PHC was recorded.

Based on discussion with the parties, the ALJ issues the following order:

1. Student's Motion to Amend Complaint. On August 29, 2014, Student filed a Due Process Hearing Request (complaint), naming Berkeley. This matter was scheduled for hearing beginning on October 23, 2014. On October 16, 2014, Student filed a Motion to Amend the Due Process Hearing Request along with a proposed amended complaint which identified additional issues for hearing pertaining to the 2014-2015 school year. On October 20, 2014, Student filed a proposed second amended complaint which includes claims for the 2013 and 2014 extended school year which Student indicates were inadvertently omitted. During the PHC, Berkeley stated that it did not oppose Student's motion to amend and agreed to have Student's complaint dated October 20, 2014, to be deemed a first amended complaint. Student agreed to withdraw her complaint dated October 16, 2014, and re-designate the October 20, 2014 complaint as her First Amended Complaint.

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).)

Student's motion to amend was deemed timely as it was filed more than five days prior to the hearing. OAH called Berkeley's counsel on October 17, 2014, to determine if it

opposed the motion. At that time Berkeley had not determined its position. At the PHC, Berkeley contended that it did not consider Student's request timely as it was entitled to three business days to respond. Regardless of Berkeley's position, while on the record in the PHC, Berkeley also stated that it does not oppose Student's motion to amend. Accordingly, Student's motion to amend is granted.

Student's amended complaint of October 16, 2014, is withdrawn. Student's amended complaint of October 20, 2014, is designated a First Amended Complaint and shall be deemed filed as of October 20, 2014. All applicable timelines shall be reset as of the date of this Order and OAH will issue a scheduling order with the new dates.

2. Other Matters. Student did not file a prehearing conference statement in compliance with OAH's scheduling order. Student was reminded that she is expected to comply with all OAH orders, including the timely submission of a PHC statement, at least three business days prior to the PHC.

IT IS SO ORDERED.

DATE: October 20, 2014

/s/  
\_\_\_\_\_  
THERESA RAVANDI  
Administrative Law Judge  
Office of Administrative Hearings