

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CALIFORNIA VIRTUAL ACADEMIES.

OAH Case No. 2015090988

ORDER REGARDING AMBIGUOUS
FILINGS AND DIRECTING STUDENT
TO FILE SECOND AMENDED
COMPLAINT, IF STUDENT DESIRES
TO REVIVE ABANDONED CLAIMS

On September 23, 2015, Student filed a Due Process Hearing Request (complaint), naming California Virtual Academies (Charter). On October 19, 2015, Student filed a document that the Office of Administrative Hearings deemed to be a motion to amend the complaint (amended complaint); OAH granted Student's motion to amend and the amended complaint was deemed filed on October 29, 2015.

On November 3, 2015, Charter filed a document captioned "Opposition to October 29, 2015 Motion to Amend and Declaration of Kimberly Odom in Support of Respondent's Opposition to Petitioner's October 29, 2015 Motion and Request for Complete Copy of Petitioner's Filing." Charter's filing contends Parent sent Charter an email on the night of October 28, 2015, attaching a document that Parent stated had been filed with OAH that day, and stating that a copy of the document would be faxed to Charter's office and to Charter's attorney. Charter's filing asserts that the document attached to the email referred to an Exhibit A, but that what Charter received did not include any exhibit.

OAH had not received any additional filing from Student between the October 19, 2015 motion to amend and the October 29, 2015 order granting the amendment.

On November 4, 2015, at 3:39 p.m., Student filed a document titled "Notice of Objection to Plaintiffs [sic] Motion filed on 10/23/2015 [AND] [brackets in original] Notice of Motion to Present additional [sic] Evidence and Documents With Good Cause Showing." The document appears to be the same document attached to the email sent to Charter on October 28, 2015, but it has a page marked Exhibit A and several pages attached. Although the document contains many of Parent's thoughts, it is not clear what Parent sought as a result of filing the document. It appears Parent understood a document Charter filed with OAH on October 23, 2015, titled "Request for Complete Copy of Petitioner's Motion to Present Additional Evidence and to Add Additional Complaints," to assert that Charter had not received a complete copy of the document Student filed with OAH on October 19, 2015, and Parent wanted to dispute that and offer assurance that the documents Charter asserted were missing had in fact been provided to Charter. Parent repeated complaints about alleged

actions and inactions of Charter, which form the basis of Student's case. Parent did not request any order from OAH.

On November 4, 2015, at 3:57 p.m., Student filed a document titled "Notice of Motion to Clarify Amended Complaint filed by Plaintiffs AND.....Notice of Objection to Defendants [sic] Motion and Opposition to Plaintiffs [sic] Amended Complaint filed." In this filing, Student indicates the allegations contained in the amended complaint were not intended to replace the allegations and claims of the original complaint, but were intended to be claims stated in addition to those stated in the original complaint. Student states, "[t]he Amended Filing of Complaints was in no way [emphasis removed] intended or an attempt to remove or withdraw from the Original Complaints filed against the Defendants The Amended Complaint was based on Additional Violations and Complaints about the Defendants that occurred after the original filing with the OAH and Plaintiffs sought to file those additional complaints and violations to be added to the Original Complaints." Again, Student's "motion" did not request any order from OAH.

In the September 28, 2015 Order Denying Charter's Notice of Insufficiency, OAH identified that Student's original complaint contained the following claims/issues: 1) Was CAVA, as a charter school, required to provide services to students with disabilities and, in Student's case, did it fail to do so; 2) did CAVA deny Student a free appropriate public education from and after June 4, 2015, by failing to offer Student an appropriate placement and services that considered and were consistent with Student's prior Home Hospital orders; 3) did CAVA discriminate against Student and her parents by failing to allow Student to enroll at CAVA for the 2015-2016 school year; 4) did CAVA deny Student a FAPE by failing to allow Student to enroll at CAVA for the 2015-2016 school year; and 5) did CAVA deprive Parents of the opportunity to participate in the development of Student's educational program by failing to convene an IEP meeting after Parents requested one?

The filing of the amended complaint had the effect of replacing the claims/issues stated in the original complaint with those, and only those, stated in the amended complaint. Therefore, this matter will proceed only on the issues presented in Student's amended complaint. If Parent believes the original complaint contained claims that were not stated in the amended complaint, Student is directed to file a proposed second amended complaint along with a motion to further amend the complaint. Any proposed second amended complaint should state, in one document, all allegations and issues/claims Student wishes to bring against Charter. If OAH grants any motion to further amend the complaint, all timelines for the due process hearing would be reset and a new scheduling order would be issued. However, the case will proceed on the currently scheduled dates unless Student files a second amended complaint as set forth in this order.

A parent who is not represented by an attorney may request that OAH provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint. (Ed. Code, § 56505.) Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

IT IS SO ORDERED.

DATE: November 9, 2015

/s/

KARA HATFIELD
Administrative Law Judge
Office of Administrative Hearings