

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS on behalf of STUDENT,

v.

MONTECITO UNION ELEMENTARY  
SCHOOL DISTRICT AND SANTA  
BARBARA COUNTY OFFICE OF  
EDUCATION.

OAH CASE NO. 2009050484

ORDER GRANTING CONDITIONAL  
LEAVE TO AMEND PROPOSED  
RESOLUTIONS

On May 8, 2009, Student filed a request for due process hearing (complaint) in this matter with the Office of Administrative Hearings (OAH).

On July 10, 2009, Student filed a pleading entitled "Petitioner's Amendment to Complaint Adding Reimbursement as a Remedy."

On July 13, 2009, the District and the Santa Barbara County Office of Education (COE)(hereinafter collectively the District) filed a response to Student's amendment, stating that it has not agreed to the filing of that amendment.

On July 14, 2009, OAH issued an order that deemed Student's amendment a motion to amend his complaint, and invited the parties to brief the motion.

On July 21, 2009, the District filed an opposition to the motion to amend, and on July 28, 2009, Student filed a reply.

APPLICABLE LAW

The Individuals with Disabilities in Education Act (IDEA) requires that a due process complaint notice (complaint) contain, *inter alia*, the following:

(III) a description of the nature of the problem of the child relating to such proposed initiation or change, including facts relating to such problem, and

(IV) a proposed resolution of the problem to the extent known and available to the party at the time.

(20 U.S.C. § 1415(b)(7)(A)(ii)(III), (IV); see also, Ed. Code, § 56502, subd. (c)(1)(C), (D).)

The statute permits the amendment of complaints, but only in the following circumstances:

A party may amend its due process complaint notice only if (I) the other party consents in writing to such amendment ... or (II) the hearing officer grants permission ... at any time not later than 5 days before a due process hearing occurs.

(20 U.S.C. § 1415(c)(2)(E)(i); see also, Ed. Code, § 56502, subd. (e).)

The statute also provides that “[t]he applicable timeline for a due process hearing ... shall recommence at the time the party files an amended notice ... .” (20 U.S.C. § 1415(c)(2)(E)(ii U.S.); see also, Ed. Code, § 56502, subd. (e).)

Unless the due process complaint notice (complaint) is amended, the IDEA permits the addition of an issue to a due process complaint notice only with the agreement of the opposing party. (20 U.S.C. § 1415(f)(3)(B); see also, Ed. Code, § 56502, subd. (i).)

If the parents of a child with a disability unilaterally place their child in a private school or other placement, and a hearing officer finds both that the educational agency has not offered or provided a free appropriate public education (FAPE) to the child, and that the private placement was appropriate, the hearing officer may order the agency to reimburse the parents for the educational costs they incurred for that placement. (34 C.F.R. § 300.148(c).)

## DISCUSSION

Student cannot add an issue to his complaint except by permission of his opponents, or by amending the entire document after obtaining leave to do so from OAH. (20 U.S.C. § 1415(f)(3)(B).) An amended complaint would require that the timeline for hearing be restarted (20 U.S.C. § 1415(c)(2)(E)(ii), a consequence Student apparently seeks to avoid. The District has declined to agree to the proposed amendment.

Student’s original complaint, filed on May 8, 2009, contained no proposed resolution concerning reimbursement. Student argues that amendment of his complaint to add reimbursement as a proposed resolution was made necessary because the due process hearing was originally set for July 7, 2009, but OAH granted the District’s request for a continuance until September 3, 2009. Student states that as a result of the continuance, Parents have incurred expenses for an extended school year (ESY) placement that could not have been anticipated.

The District and COE (hereinafter collectively the District) respond that even if the hearing had proceeded as originally scheduled on July 7, 2009, the matter would not have been decided before the ESY was over, and therefore Parents knew, or should have known, when they filed their complaint that they might need to seek reimbursement for a private ESY placement. The District's analysis is persuasive only in part. Because of the timing of the complaint and the hearing, it does appear likely that Student knew his case would not be resolved before an ESY decision had to be made. Whether Parents had already made the decision to seek a private placement when they filed the complaint cannot be determined from the record.

However, the District further argues that because Parents may have known of the possibility of a private placement when their original complaint was filed, Parents should be now barred from adding reimbursement as a resolution. It cites no authority for that claim, and advances no reason why the IDEA should be so strictly interpreted. Nor does the District attempt to make any showing that any prejudice will result by inclusion and consideration of the new proposed resolution. Since the due process hearing is now scheduled for September 3, 2009, the District has ample time to prepare to respond to the request for reimbursement.

Nothing in the IDEA prevents Student from refining his requests for resolution. The fact that the IDEA in one subsection requires a complaint to contain facts relating to the problem, and in a different subsection requires that the complaint contain a proposed resolution "to the extent known and available to the party at the time," suggests that a proposed resolution is distinct from an issue. (See, 20 U.S.C. § 1415(b)(7)(A)(ii)(III), (IV).) It also suggests that a party need not completely plead a resolution in an original complaint, because it is not unusual that a party's view of appropriate relief may evolve as his action proceeds.

Student's proposed resolution involving reimbursement is not a new issue; it is a request for relief. The IDEA empowers district courts to "grant such relief as the court determines is appropriate." (20 U.S.C. § 1415(i)(2)(C)(iii).) That provision has long been interpreted as allowing a district court, in an appropriate case, to order reimbursement for the expenses of a private placement. (*School Comm. of Burlington v. Department of Ed. of Mass.*, 471 U.S. 359, 370 [105 S.Ct. 1996](*Burlington*).) A hearing officer in an administrative hearing under the IDEA also possesses that equitable authority. (*Forest Grove School Dist. v. T.A.* (2009) \_\_\_ U.S. \_\_\_, 129 S.Ct. 2484, 2494, fn. 11)(*Forest Grove*).) Nothing in *Burlington* or *Forest Grove* prevents a hearing officer from granting reimbursement relief even if parents do not pray for it in their complaint.

Since the proposed amendment does not add an issue, but merely proposes a remedy the ALJ could consider anyway, it will be allowed. On this record there is no prejudice to the District in allowing the amendment. Student will be required to notify the District of the details of his private placement so that the District has ample time to prepare its defenses to the request.

ORDER

1. Student's complaint is deemed amended by adding reimbursement for educational expenses during the ESY as a proposed resolution, but only on the condition that follows.

2. On or before August 14, 2009, Student shall provide to the District written notice of the details of his ESY placement, a copy of any document or record that describes the nature of the education and services he received in that placement, and a statement of the specific educational costs he seeks to recover.

3. All dates now set for further proceedings in this matter remain in effect.

Dated: August 6, 2009

/s/

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CHARLES MARSON  
Administrative Law Judge  
Office of Administrative Hearings