

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

OAH CASE NO. 2010090290

v.

PASO ROBLES JOINT UNION SCHOOL
DISTRICT,

PASO ROBLES JOINT UNION SCHOOL
DISTRICT,

OAH CASE NO. 2010090190

v.

PARENT ON BEHALF OF STUDENT.

ORDER GRANTING MOTION TO
CONSOLIDATE; GRANTING
STUDENT'S MOTION TO AMEND;
AND DENYING AS MOOT REQUEST
FOR CONTINUANCE IN DISTRICT'S
CASE

On September 7, 2010, Paso Robles Joint Union School District (District) filed a request for due process hearing in OAH case number 2010090190 (District's Case). The District's Case alleged an issue regarding Student's request for an IEE. On September 7, 2010, Student filed a complaint in OAH case number 2010090290 (Student's Case). Student's Case alleged a single issue regarding a request for an IEE.

On September 13, 2010 the parties filed a stipulated request for consolidation of Student's Case and District's Case. That same day, Student filed a motion to amend Student's Case to add two issues that appear to be alleging some type of privacy invasion theory related to Student's records and the IEE request. Also that same day, District filed an opposition to the motion to amend in Student's Case. District's opposition contended that Student should not be permitted to amend because Student could have, but did not allege the issues on the date of original filing, and the two new issues appeared to be outside of OAH jurisdiction. Finally, on September 13, 2010, the parties submitted a stipulated request for continuance in District's Case.

This Order disposes of the stipulated consolidation request, the motion to amend in Student's Case, and the stipulated continuance motion in District's Case. As discusses below, the matters will be consolidated based on the common issues of law and fact in Student's Case and District's Case. Student's motion to amend will be granted without prejudice to District bringing an NOI and/or any motions it sees fit. Finally, because

consolidation and the motion to amend will be granted, the motion for continuance in District's Case is denied as moot.

Consolidation

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].)

Here, Student's Case and District's Case involve common questions of law and fact. Significantly, the parties stipulated to consolidation. District did not retract this stipulation, despite opposing Student's motion to amend in Student's Case. Accordingly, the matters will be consolidated in the interest of judicial economy.

Amendment

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)(II).) The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. § 1415(f)(1)(B).)

Here, District opposes amendment. However, Student's request to amend was filed less than one week after Student and District filed their respective complaints. The fact that Student could have, but did not, raise the additional issues at the time of the original filing is no reason to deny amendment given the short time frame. Similarly, whether or not the new allegations are sufficient and/or meritorious is not a reason to deny amendment. Following amendment, District has procedural rights such as an NOI to challenge the sufficiency of the allegations, or a motion to dismiss for lack of jurisdiction. Accordingly, given the short time frame after the initial filing, Student's motion to amend in OAH Case Number 2010090290 is granted. All applicable timelines must be reset, using the date of this Order as the filing date of the amended complaint.

Continuance in District's Case

The stipulated continuance request in OAH Case Number 2010090190 is denied as moot. All dates in that matter are vacated by consolidation and the resetting of all timelines following the amended due process request in OAH Case Number 2010090290.

ORDER

1. District and Student's Stipulated Motion to Consolidate is granted. District's Case, OAH Case Number 2010090190 is consolidated with Student's Case, OAH Case Number 2010090290. Student's Case shall be deemed the "primary" case, and the due date for a decision in the consolidated matters will be calculated based on the dates set in Student's Case.
2. All dates previously set in District's Case, OAH Case Number 2010090190 are vacated.
3. Student's Motion to Amend the due process hearing request in OAH Case Number 2010090290 is granted. This Order does not address whether the proposed amendment is sufficient and/or states claims within OAH jurisdiction, and is without prejudice to District filing motions to challenge the sufficiency of the allegations or a motion addressing the merits of the new allegations.
4. All dates in Student's Case, OAH Case Number 2010090290 are vacated. OAH will issue a new scheduling order for the consolidated cases using the date of this order as the filing date of the amended due process hearing request in Student's Case, OAH Case Number 2010090290.
5. The parties' stipulated request for a continuance in District's Case, OAH Case Number 2010090190 is denied as moot because all dates in that matter are vacated as a result of consolidation, and all dates in the consolidated case are reset as a result of Student filing an amended complaint.

Dated: September 14, 2010

/s/

RICHARD T. BREEN
Administrative Law Judge
Office of Administrative Hearings