

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2010100191
SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2011031543 ORDER GRANTING MOTION TO AMEND, MOTION TO CONSOLIDATE, AND MOTION TO CONTINUE

On October 5, 2010, Student filed a Request for Due Process Hearing in OAH case number 2010100191 (Student's Case), naming District as the respondent. On March 29, 2011, District filed a request for due process hearing naming Student as the respondent in OAH Case Number 2011031543 (District's Case). On April 6, 2011, Student filed an amended due process hearing request (Amended Complaint), with no indication of whether District consented to the amendment and no motion to amend.

On April 8, 2011, the parties filed a stipulated request to consolidated the two cases and continue the consolidated hearing to mutually agreed dates.

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 has not consented to the amendment in writing. Thus, Student's filing will be treated as a motion to amend. District's conduct, of responding to the amended complaint without objection and by stipulating to consolidation of its due process hearing

request with Student's, can be interpreted as non-opposition. Accordingly, the amended complaint will be permitted and deemed filed on April 6, 2011.

The filing of the amended complaint in Student's Case resets all timelines in Student's Case. Under generally applicable OAH scheduling guidelines, the hearing on the amended complaint should begin no later than 55 days from the date of filing (in recognition of the 30 day mandatory resolution session and to leave sufficient time for a decision to issue). Thus, the hearing on Student's amended complaint should begin no later than May 31, 2011. However, as discussed below, the parties have requested both consolidation and a continuance.

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 Amended Complaint makes various allegations that Student was denied a FAPE during the statute of limitations period, up to and including the 2010-2011 school year. Student specifically alleges that the IEP offered in December of 2010 did not provide a FAPE. District's Complaint expressly seeks an order declaring that it offered Student a FAPE in the December of 2010 IEP. Accordingly, because there is an overlap of law and facts that would save hearing time and result in one ruling about all disputes, consolidation is appropriate and is granted.

Continuance

A due process hearing must be held, and a decision rendered, within 45 days of receipt of the complaint, unless a continuance is granted for good cause. (Ed. Code, §§ 56502, subd. (f) & 56505, subd. (f)(1)(C)(3).)

Here, the parties are seeking a continuance of the reset hearing date on Student's Amended Complaint, which would be May 31, 2011. Because the parties have selected mutually agreeable dates that are not long after the originally contemplated date, the continuance will be granted.

ORDER

1. Student's Motion to Amend is granted. The Amended Complaint in Student's Case is deemed filed on April 6, 2011.
2. The joint Motion to Consolidate is granted.
3. All dates previously set in OAH Case Numbers 2010100191 (Student's Case) and 2011031543 (District's Case) are vacated.
4. The joint Motion to Continue is granted. The Mediation in the above-captioned case shall be held on April 27, 2011 at 10:00 a.m. A telephonic prehearing conference shall take place on June 1, 2011 at 10:00 a.m., and the due process hearing shall take place on June 13-17, 2011 at 1:30 p.m. the first day, 9:30 a.m. thereafter.
5. The 45-day timeline for issuance of the decision in the consolidated cases shall be based on the April 6, 2011 date of the filing of the Amended Complaint in OAH Case Number 2010100191 (Student's Case) and the granting of a continuance as of the date of this Order.

Dated: April 11, 2011

/s/

RICHARD T. BREEN
Presiding Administrative Law Judge (acting)
Office of Administrative Hearings