

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Consolidated Matters of:	
PARENT ON BEHALF OF STUDENT,	OAH CASE NO. 2010100921
v.	
MODESTO CITY SCHOOLS,	
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MODESTO CITY SCHOOLS,	OAH CASE NO. 2010100325
v.	
PARENT ON BEHALF OF STUDENT.	ORDER DENYING MOTION TO AMEND COMPLAINT

On October 6, 2010, Modesto City Schools (District) filed a Request for Due Process Hearing in OAH case number 2010100325 (District’s Case), naming Student (Student) as the respondent. District’s Case stated two issues, one of which was subsequently withdrawn, leaving the second issue as the only remaining issue: Did District offer Student a FAPE in the September 17, 2010 IEP.<sup>1</sup> District’s Case indicated that Student was currently in a stay put placement because his parents had disagreed with District’s offer.

On October 18, 2010, Student filed a Request for Due Process Hearing in OAH case number 2010100921 (Student’s Case), naming the District, stating issues as follows: (1) “First Contention/Nature of the Problem: The District denied [Student] a FAPE for the 2010-2011 school year by insisting that a FAA be conducted by a BCBA who is unqualified. The District’s failures include, but are not limited to, rejecting parental input and hiring unqualified personnel,” and (2) “Second Contention/Nature of the Problem: The District denied [Student] a FAPE for the 2008-2009, 2009-2010 and 2010-2011 school years by failing to implement [Student’s] PBIP. The District’s failures include, but are not limited to, exiting the PBIP by suspending [Student] for behaviors in the plan and failing to keep accurate data. These failures are also in violation of the Hughes Bill. The District also denied him a FAPE for these school years by failing to implement all the goals and supports

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<sup>1</sup> District’s Issue 1 had concerned a dispute over a functional analysis assessment (FAA). On October 29, 2010, District and Student resolved the FAA issue. Consequently, on November 9, 2010, District filed a Motion to Withdraw its Issue 1. Student filed no opposition. On November 17, 2010, OAH granted District’s motion to withdraw its Issue 1.

in his IEPs during this timeframe. Moreover, the District failed to develop appropriate IEPs that contained appropriate goals, supports and services in all areas of need including, but not limited to: behavior, speech and language, communication, alternative/augmentative communication, social skills and academics. The District also conducted an inappropriate ABLLS assessment.”

On October 20, 2010, Student filed a Motion to Consolidate District’s Case with Student’s Case. On October 25, 2010, OAH granted the Motion to Consolidate, vacated the hearing dates in District’s Case, and set consolidated hearing and pre-hearing dates based on the date of the filing of the complaint in the Student’s Case.

Student, now moves to amend his complaint. The proposed amendment withdraws Student’s “First Contention/Nature of the Problem” regarding the FAA. The proposed amendment removes facts relating to an October 9, 2008 IEP meeting. The proposed amendment also includes new facts that occurred on October 14, 2010 and October 29, 2010, i.e. subsequent to the filing of the original complaint in Student’s Case, makes new factual allegations that Student had been suspended for more than ten days, and adds factual allegations concerning a Manifestation Determination held on October 29, 2010. The proposed amendment does not allege that the manifestation determination was improper, but expands the “Second Contention/Nature of the Problem” to include the following additional contention: “[District failed] to deliver Behavior Emergency Reports to parents within 1 day, fail[ed] to hold an IEP meeting within two days of the event, continued suspension of [Student], and fail[ed] to properly modify BIP as needed.”

By Opposition dated November 19, 2010, District opposed Student’s Motion, arguing that the Motion to Amend is an improper attempt by Student to obtain a continuance and delay the hearing. District requests that, if the amendment is granted, the hearing dates remain as currently calendared.

As discussed below, District is entitled to a timely hearing. Student’s Motion to Amend is therefore denied. Student’s contentions arising after the filing of its original complaint may be raised in new due process complaint.

#### APPLICABLE LAW

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).)

Special education law expressly permits the filing of multiple, serial due process hearing requests on different issues, without any regard to the burden on the responding educational agency. (See 20 U.S.C. § 1415(o), Ed. Code, §56509.)

#### DISCUSSION

As District argues, the filing of an amended complaint restarts the applicable timelines for the due process hearing. Here, because District's Case was consolidated into Student's Case on Student's motion, such a delay would affect not only Student's Case but also District's Case. District is entitled to a timely hearing on its due process complaint, which was brought prior to the original filing in Student's Case. Nothing prevents Student from seeking relief on the facts alleged subsequent to its original filing simply by bringing another complaint. The Motion to Amend is therefore denied.

IT IS SO ORDERED.

Dated: November 22, 2010

/s/

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JUNE R. LEHRMAN  
Administrative Law Judge  
Office of Administrative Hearings