

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES COUNTY OFFICE OF
EDUCATION, LOS ANGELES COUNTY
DEPARTMENT OF MENTAL HEALTH,
MONROVIA UNIFIED SCHOOL
DISTRICT, POMONA UNIFIED SCHOOL
DISTRICT AND COVINA-VALLEY
UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2010120475

ORDER GRANTING MOTION TO
FILE SECOND AMENDED
COMPLAINT

On December 13, 2010, Student filed a Due Process Hearing Request (complaint), naming the Los Angeles County Office of Education (LACOE), the Monrovia Unified School District (Monrovia), and the Los Angeles County Department of Mental Health (LACMH). On February 3, 2011, Student filed a First Amended Complaint. On March 15, 2011, Student filed a “Motion to Add Parties and One Issue to Due Process Complaint,” which includes a proposed Second Amended Complaint adding as parties the Pomona Unified School District and the Covina-Valley Unified School District. The motion is in substance a motion for leave to file a Second Amended Complaint. The matter is now set for hearing on April 1, 2011.

On March 17, 2011, LACOE filed a notice of non-opposition to the motion. On that same day, Monrovia filed an opposition to the motion. No response from LACMH has been filed.

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).)¹ The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. §1415(c)(2)(E)(ii).)

¹ All statutory citations are to title 20 United States Code unless otherwise indicated.

The first ground of Monrovia's opposition is that Student knew of the facts underlying the proposed Second Amended Complaint more than 10 business days before seeking leave to amend, and thus has failed to comply with Government Code section 11524. However, that section applies only to hearings formally held under the Administrative Procedure Act and not to special education due process proceedings, in which an amendment may be allowed at any time more than five days before hearing. (20 U.S.C. §1415(c)(2)(E)(i).)

The second ground for Monrovia's opposition is that filing a second amended complaint will prolong this proceeding, and the Individuals with Disabilities Education Act requires prompt resolution of complaints. However, the Act does allow for amendments, as noted above, and Monrovia does not argue that the proposed amendments are improper or inappropriate. Monrovia has not filed its own complaint, and it does not argue that any particular prejudice will be occasioned if the complaint is amended again and the timeline is restarted. Moreover, absent unusual circumstances a filing party may voluntarily dismiss its complaint and file another, which is no doubt what would occur here if the motion were denied, and which would simply be wasteful of the resources of all involved.

The motion to amend is timely and is granted. The Second Amended Complaint shall be deemed filed on the date of this order. All applicable timelines shall be reset as of the date of this order. The Pomona Unified School District and the Covina-Valley Unified School District shall be added to the caption of this matter, and the Office of Administrative Hearings will issue a scheduling order with the new dates.

IT IS SO ORDERED.

Dated: March 22, 2011

/s/

CHARLES MARSON
Administrative Law Judge
Office of Administrative Hearings