

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. MANTECA UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2011050574 (originally consolidated with OAH Case No. 2011050289)
MANTECA UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2011050289
In the Matter of: PARENT ON BEHALF OF STUDENT, v. MANTECA UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2011060184 [PRIMARY] 1. ORDER GRANTING IN PART AND DENYING IN PART STUDENT’S MOTION TO ADD PARTIES; 2. ORDER GRANTING STUDENT’S MOTION TO AMEND COMPLAINT IN OAH CASE #2011050574; 3. ORDER GRANTING STUDENT’S MOTION FOR CONSOLIDATION

District filed a request for due process hearing (District’s complaint) on May 4, 2011, which raised the single issue of whether District may assess Student in the area of social/emotional in accordance with a December 2010 assessment plan. On May 12, 2011, Student filed a request for mediation and due process hearing (Student’s first complaint), which also related to the issue of assessments in the December 2010 assessment plan. OAH consolidated the two cases on May 17, 2011 resulting in the first consolidated matter. On May 24, 2011, Student filed a second request for mediation and due process hearing (Student’s second complaint) identified as OAH case number 2011060184. Student’s second case also involves issues relating to the December 2010 assessments. On May 30, 2011,

Student filed a motion to amend, add parties and withdraw claims. On June 4, 2011, Student filed a further motion to amend. On June 8, 2011, OAH denied Student's May 30 and June 4, 2011 motions without prejudice.

On June 14, 2011, Student filed three motions (June 14 Motions) under OAH case number 2011060184: 1) motion to add additional parties to Student's complaint in the first consolidated matter; 2) motion to amend Student's complaint in the first consolidated matter; and 3) motion to consolidate the first consolidated matter with Student's complaint identified as OAH case number 2011060184. Student included a proposed amended and consolidated complaint.

District filed an opposition to Student's request to add a party on June 17, 2011 under the caption of the first consolidated action. Also on June 17, 2011, proposed new parties San Joaquin County Office of Education and San Joaquin Special Education Local Plan Area (SELPA) filed under OAH case number 2011060184 an opposition to their addition as parties.

Although Student's June 14, 2011 motions and some of the responsive pleadings do not correctly reflect the appropriate case numbers, in order to avoid further delay and confusion, this Order addresses all three of Student's motions under their respective case numbers and shall be binding in all three matters.

Addition of Party

A party may amend a complaint only if the hearing officer grants permission, or as otherwise specified.¹ (20 U.S.C. § 1415(c)(2)(E)(i).) The applicable timeline for a due process hearing shall recommence at the time a party files an amended complaint. (20 U.S.C. § 1415(c)(2)(E)(ii).) A public education agency involved in any decisions regarding a student may be involved in a due process hearing. (Ed. Code, § 56501, subd. (a).) A public education agency is defined as any public agency, including a charter school, responsible for providing special education or related services. (Ed. Code, §§ 56500, 56028.5.)

Here, Student seeks to add San Joaquin County Office of Education (COE), San Joaquin SELPA, and school psychologist Kristopher Hensley to the first consolidated matter. San Joaquin COE and San Joaquin SELPA are proper parties under Education Code section 56501, subd. (a).

Both the COE and SELPA argue in opposition that they should not be added to the case because they did not provide services to Student during the time frame involved in the first consolidated matter. Their arguments go to the merits of the complaint against them, and require findings of fact by the hearing officer, and therefore their arguments fail for

¹ The applicable timeline for a due process hearing shall recommence at the time a party files an amended Complaint. (20 U.S.C. § 1415(c)(2)(E)(ii).)

purposes of this motion. Student's request to add San Joaquin COE and San Joaquin SELPA as parties to his complaint in OAH case number 2011050574 is granted.

However, as to school psychologist Kristopher Hensley, alleged by Student to be an individual, he is not a proper party under Ed. Code section 56501, subd. (a), which provides that only "public education agenc[ies]" are proper parties to due process hearings. Therefore, Student's motion to add Mr. Hensley as a party is denied.

Motion to Amend

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).)² The filing of an amended complaint restarts the applicable timelines for the due process hearing. (§1415(f)(1)(B).)

Student's proposed amended complaint in the first consolidated matter is timely. However, Student's amended complaint shall *not* include *as a party* school psychologist Kristopher Hensley, an individual. Therefore, with that exception, the proposed 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.

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 seeks to consolidate the first consolidated matter, as amended by this Order, with Student's second complaint. Both matters involve a common question of law or fact relating to assessments arising from District's December 2010 assessment plan. District did not oppose consolidation in its opposition.

Consolidation furthers the interests of judicial economy because of the commonality of issues. Accordingly, consolidation is granted. Student's second complaint shall be considered the primary case.

² All statutory citations are to Title 20 United States Code unless otherwise indicated.

ORDER

1. Student's motion to add San Joaquin COE and San Joaquin SELPA as parties is GRANTED.
2. Student's motion to add Kristopher Hensley as a party is DENIED.
3. Student's motion to Amend the his first complaint in the first consolidated matter is GRANTED, and the proposed amended complaint shall be deemed filed as of the date of this Order, providing, however, that Kristopher Hensley shall not be a named party.
4. Student's motion to consolidate OAH case numbers 2011050574/2011050289 with OAH case number 2011060184 is granted. OAH case number 2011060184 shall be primary and all documents filed with OAH by the parties shall reflect all three case numbers, with case number 2011060184 identified as "Primary."
5. All dates previously set in the first consolidated matter, OAH Case Number 2011050574/2011050289, are vacated. All dates previously set in OAH Case number 2011060184 are vacated.
6. OAH shall issue a new scheduling order effective on the date of this Order.
7. The 45-day timeline for issuance of the decision in the consolidated cases shall be based on the date of this Order granting leave to amend.

Dated: June 20, 2011

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings