

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. SAN LUIS COASTAL UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2011110858
SAN LUIS COASTAL UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2011090132 ORDER GRANTING MOTION TO FILE AMENDED COMPLAINT

On September 6, 2011, the San Luis Coastal Unified School District (District) filed a Request for Due Process Hearing, OAH case number 2011090132 (District’s complaint), against the Parent on behalf of Student (Student) as respondent. The District’s complaint contains a single issue: Was the District’s assessment dated May 24, 2011, appropriate? On September 26, 2011, the parties filed a joint request to continue the due process hearing from October 4, 2011, to December 14, 2011. OAH granted the continuance on September 26, 2011.

On November 22, 2011, Parent filed a Request for Due Process Hearing, OAH case number 2011110858 (Student’s complaint), naming the District as respondent. Student’s complaint contains two issues: (1) is Student entitled to an independent education evaluation at public expense? and (2) Should Student have been eligible for special education under the category of “autistic-like” [behaviors] at the May 24, 2011 Individualized Education Program (IEP) meeting?

On November 28, 2011, Student also filed a motion to consolidate the two cases. On December 1, 2011, the Office of Administrative Hearings granted the Student’s motion to consolidate. On January 3, 2012, the parties filed a joint request to continue the due process hearing which was granted by OAH the same day. The due process hearing was scheduled for March 20, 2012. On March 2, 2012, Student filed a motion for continuance so that he might retain legal counsel. On March 7, 2012, OAH granted Student’s continuance motion scheduling the Prehearing Conference (PHC) for April 30, 2012, and the due process hearing for May 7, 2012. In its order, OAH stated: “**No further continuances will be granted**”

without an exceptional showing of good cause. Unavailability of Student’s counsel shall not constitute good cause.” (Emphasis in original)

On April 25, 2012, both parties filed with OAH their PHC statements. On April 26, 2012, Student filed a motion to file an amended complaint, which adds two new issues to his original complaint. The first new issue is that the District committed a procedural violation of the IDEA by not having a general education teacher at the May 24, 2011, IEP meeting. The second issue is whether Student should have been found eligible for special education at the March 20, 2012 IEP meeting when the IEP team reviewed an independent education evaluation provided by Student.

On April 27, 2012, the District filed its opposition to Student’s motion to file an amended complaint. The District’s grounds for opposing the motion are that first new issue (attendance of general education teacher at the May 24, 2011 IEP meeting) is included in the original complaint; and that the District has a right to a speedy resolution of its complaint. The District opposition also stated that its counsel offered to not oppose the motion to file an amended complaint if Student’s counsel would agree to have the due process hearing in September when District witnesses would be available as opposed to during the summer recess. Student’s counsel rejected counsel’s offer. On April 27, 2012, Student filed a reply to the District’s opposition.

APPLICABLE LAW AND DISCUSSION

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).)

In the event that the motion is denied, Student would likely file a second due process request as to the two new issues. This would result in duplication of testimony and result in further cost to the parties and delay. Judicial economy would be served to permit the filing of the amended complaint since the issues are related—the decision of the District that Student was not eligible for special education at the IEP meetings of May 24, 2011 and March 20, 2011.

The motion to amend is timely and is granted. The 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 and that the new due process hearing be scheduled for September 2012. OAH will issue a scheduling order with the new dates. In the alternative, The parties may meet and

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

confer as to whether they would agree to waive the setting of new timelines and proceed on the scheduled dates for the PHC and due process hearing.

IT IS SO ORDERED.

Dated: April 27, 2012

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings