

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

MILLBRAE SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NO. 2013030202

ORDER GRANTING MOTION TO
AMEND COMPLAINT AND
DENYING MOTION TO DISMISS AS
MOOT

On March 6, 2013, District filed a Request for Due Process Hearing (complaint) against Student. In its complaint, District sought to an order from the Office of Administrative Hearing (OAH) finding that its individualized educational program's (IEP's) placement and service offers constitute a free appropriate public education (FAPE) for Student, and that it should be allowed to implement the IEP(s) without parental consent.

On March 15, 2013, Student filed a motion to dismiss the complaint (motion) on the grounds that the dispute is not ripe for adjudication. Specifically, Student contends that District's complaint is not ripe because Student is awaiting the result of a yet to be completed independent evaluation.

On March 20, 2013, before OAH could rule on Student's motion, District submitted an amended complaint to OAH for filing. The amended complaint added one additional issue relating to the appropriateness of District's psychoeducational assessment conducted in November 2012. OAH deems the filing of the amended complaint a Motion to Amend the Due Process Hearing Request.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education," and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a

disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

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 days prior to the due process hearing. (20 U.S.C. §1415(c)(2)(E)(i)(II).)¹ The filing of an amended complaint restarts the applicable timelines for the due process hearing. (§1415(f)(1)(B).)

DISCUSSION

Amended Complaint

The motion to amend is granted. Here, the due process hearing in this matter is currently set to begin on April 4, 2013. Thus, the motion to amend is timely as District made the motion more than five days before the hearing is scheduled to commence. Further, Student has not opposed District's request to amend the complaint. Accordingly, the motion is granted.

Motion to Dismiss Initial Complaint

In his motion to dismiss, Student contends that the issues presented in District's complaint dated March 6, 2013, are not ripe for adjudication, and as such the complaint should be dismissed. Student's motion to dismiss appears moot due to the filing of an amended complaint by District on March 20, 2013. That is, because District filed an amended complaint on March 20, 2013, the original complaint (filed on March 6, 2013) sought to be dismissed by Student is superseded, and the March 6, 2013 complaint is no longer at issue.¹ Therefore, Student's motion to dismiss District's complaint dated March 6, 2013 is moot, and is denied.

¹ Nonetheless, it is doubtful that Student's assertion is supported in light of the IDEA statutory schemes. The IDEA allows both Parents and District the right to present a complaint with respect to disputes relating to assessments, identification, and educational placement, and implementation of IEP's, among others, whenever such disputes arise. Based on the complaint, a dispute exists between District and Parents regarding Student's placement and services, and the question of whether District could implement Student IEP without Parents' consent.

ORDER

1. 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. OAH will issue a scheduling order with the new dates.

2. Student's motion to dismiss District's Due Process Complaint dated March 6, 2013 is denied as moot.

IT IS SO ORDERED.

Dated: March 25, 2013

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings