

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

MODESTO CITY SCHOOLS,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2014020485

ORDER LIMITING ISSUE FOR
HEARING

On February 13, 2014, Modesto City Schools (Modesto) filed a due process hearing request (complaint), naming Student. When the case was filed, Modesto's issue for hearing was whether it had offered Student a free appropriate public education (FAPE) for the 2013-2014 school year. At that time, Modesto alleged that there were two individualized education programs (IEP's) offered for the 2013-2014 school year: September 26, 2013 and January 10, 2014. Modesto requested leave to file an amended complaint on February 26, 2014. In the amended complaint, Modesto indicated that that an IEP team meeting was scheduled for March 4, 2014. The request was denied and Modesto did not file an amended complaint after the March 4, 2014 IEP team meeting, moving to include the IEP developed at that team meeting in this case.

Modesto filed a prehearing conference statement in this matter on April 30, 2014. In the prehearing conference statement, Modesto framed the issue for hearing as whether the March 4, 2014 IEP offered Student a FAPE. Student did not file a prehearing conference statement and the order after prehearing conference identifies the issue for hearing as:

Does the March 4, 2014 individualized education program (IEP) offer Student a free appropriate public education (FAPE) in the least restrictive environment?

However, Modesto's complaint did not put Student on notice that the March 4, 2014 IEP was at issue in the upcoming hearing. Furthermore, the Office of Administrative Hearings lacks jurisdiction to hear an issue not identified in the complaint. The undersigned administrative law judge, in preparing for the upcoming hearing, has noticed the discrepancy in the IEP dates and clarifies the issue for hearing, as set out below, on her own motion.

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).) 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 this case, no amended complaint has been filed to add the March 4, 2014 IEP. Therefore, the issue in the hearing is whether Modesto's IEP offers of September 26, 2013 and January 10, 2014 offered Student a FAPE in the least restrictive environment. The March 4, 2014 IEP, and Modesto's request to implement the IEP over parental objection, are not properly before the ALJ in this matter at this time.

IT IS SO ORDERED.

DATE: May 9, 2014

/s/

MARGARET BROUSSARD
Administrative Law Judge
Office of Administrative Hearings