

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

OAH CASE NO. 2014030842

v.

SPENCER VALLEY ELEMENTARY
SCHOOL DISTRICT,

SPENCER VALLEY ELEMENTARY
SCHOOL DISTRICT,

OAH CASE NO. 2014030046

v.

PARENT ON BEHALF OF STUDENT.

ORDER GRANTING MOTION TO
AMEND COMPLAINT

Spencer Valley Elementary School District (Spencer Valley) filed a Request for Due Process Hearing (complaint) on March 3, 2014, naming Student. On March 21, 2014 Student filed a complaint naming Spencer Valley. The Office of Administrative Hearings (OAH) granted Student's unopposed motion to consolidate the two cases by order dated March 27, 2014, vacating all dates in Spencer Valley's case. The hearing in the consolidated cases is scheduled to begin on May 15, 2014.

On April 18, 2014, Student filed a Motion to Amend the Due Process Hearing Request (Motion) along with a proposed amended complaint (amended complaint), seeking to add an additional issue for hearing to the case regarding the failure to implement Student's Stay Put individualized education program (IEP) during the pendency of this case.

On April 24, 2014, Spencer Valley filed a notice of non-opposition to the Motion, but requested the hearing dates not be reset. Spencer Valley asserts Student is currently in an inappropriate placement and his education should not be further harmed by delaying adjudication of whether its October 25, 2013 offer of placement is inappropriate. Spencer Valley argues that a hearing during the summer is less convenient as many staff and service provider witnesses will be on break and its offices may be closed. Spencer Valley asserts that a delay of the hearing is prejudicial to its right to have the issues timely heard and decided. It agrees to waive the resolution period because it claims it is unnecessary since the parties have unsuccessfully attempted mediation. It requests that if the hearing is reset, that

the 45-day timeline for issuance of the decision commence as of the date the Motion is granted, rather than at the expiration of the resolution period.

On April 24, 2014, Student filed a reply. Student contends that amendment of the complaint is necessary because of Spencer Valley's failure to implement Stay Put during the pendency of this proceeding and any delay in the hearing is the result of its conduct. Student contends Spencer Valley did not file its complaint regarding placement until February 28, 2014, four months after its October 25, 2013 offer of placement. Student states he is taking no position on the date of hearing issue or restarting the 45-day timeline. Student anticipates OAH will reset the matter in June. Student is prepared to try this case on May 15, 2014 or in June 2014. Student leaves it to OAH's discretion as to whether to reset the hearing or not.

APPLICABLE LAW

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).)

A school district, or local education agency, must convene a meeting to discuss the issues raised in a due process complaint in order to attempt to resolve the dispute. (34 C.F.R. § 300.510 (a)(1),(2).) This meeting is commonly known as a resolution session. A resolution session need not be held if the parent and school district agree in writing to waive it (*Id.* at § 300.510 (a)(3)(i)) or if the parent and school district agree to use mediation instead of a resolution session (*Id.* at § 300.510 (a)(3)(ii)). If the parties agree to waive the resolution session, the 45-day timeline for a due process hearing begins the day after the waiver. (*Id.* at § 300.510(c)(1).) However, the timeline does not automatically begin if the parties agree to use mediation instead of a resolution session. (*Id.* at § 300.510(c).)

The hearing in this matter is set for May 15, 2014. The Motion was filed more than five days prior to the hearing and Spencer Valley does not oppose the Motion. Accordingly, the motion is both timely and unopposed, and is granted.

Spencer Valley's request that the May 15, 2014 hearing date be maintained or that resolution session be waived for purposes of the 45-day timeline for issuance of the decision is also denied. A waiver of the resolution session period and request to advance dates must be in writing and signed by all parties. Although Spencer Valley asserts that a resolution session is unnecessary and it has agreed to waive the resolution session, it has failed to establish Student's written agreement to a waiver of the resolution session period and request

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

to advance dates. While Student takes no position as to the date of hearing issue or the restarting the 45-day timeline, that is insufficient to establish both parties have indeed waived the resolution session in this matter. Therefore, Spencer Valley has failed to satisfy the requirements necessary to waive the resolution session and maintain the currently scheduled hearing date.

ORDER

1. The motion to amend is granted. The amended complaint shall be deemed filed on the date of this order.
2. Spencer Valley's request that the May 15, 2014 hearing date in the consolidated cases remain on calendar is denied. The May 9, 2014 Prehearing Conference and the May 15, 2014 Due Process Hearing are vacated, and all applicable timelines shall be reset as of the date of this order. OAH will issue a scheduling order with the new dates.
3. Spencer Valley's request for waiver of the resolution period and that the 45-day timeline for issuance of the decision commence as of the date the motion to amend is granted is also denied. The 45-day timeline for issuance of the decision in the consolidated cases shall be based on April 29, 2014 filing of Student's amended complaint.

IT IS SO ORDERED.

DATE: April 29, 2014

LAURIE GORSLINE
Administrative Law Judge
Office of Administrative Hearings