

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PANAMA-BUENA VISTA UNION
SCHOOL DISTRICT.

OAH CASE NO. 2014040519

ORDER GRANTING DISTRICT'S
MOTION TO LIMIT ISSUES

On April 8, 2014, Student filed a due process hearing request (complaint) against Panama-Buena Vista Union School District (District).

On August 15, 2014, District filed a motion to limit the issues for hearing to those arising on or before the filing of the complaint on April 8, 2014. On August 18, 2014, Student filed an opposition.

APPLICABLE LAW

Parents have 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).) However, “the party requesting the due process hearing shall not be allowed to raise issues at the due process hearing that were not raised in the [complaint], unless the other party agrees otherwise.” (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) A complaint may be amended at any time prior to five days before the hearing if the other party agrees or the hearing officer grants permission. (20 U.S.C. § 1415(f)(1)(B); Ed. Code, § 56502, subd. (e).) However, amendment of the complaint will restart all decision timelines in order to permit the parties an opportunity to attend a resolution session. (See *Ibid.* & Ed. Code, § 56501.5 [describing mandatory resolution session before parties can proceed to a due process hearing].)

DISCUSSION

District contends that Student, through his filings and correspondence with District, intends to expand the hearing issues to events that occurred after the April 8, 2014 filing date. In other words, Student intends for the issues at hearing to encompass not only those events and actions described in the complaint, but events and actions that have occurred through the date of the hearing.

In his opposition, Student contends that if issues that arise subsequent to the filing of a complaint are not made a part of the hearing, Student will be required to initiate a new due process proceeding to right every alleged wrong. Student asserts that District should be required to make a showing of harm in order to limit issues to those alleged in the complaint.

The IDEA very clearly limits a due process hearing to those issues, and only those issues, raised in the complaint unless the responding party agrees otherwise. The responding party is not required to demonstrate harm in order to limit the issues to those pleaded by the petitioner, and District is not required to make such a showing here.

The IDEA and California special education law provide a mechanism for seeking leave to amend a due process hearing request if the petitioner seeks to change or add to the issues for hearing. Here, Student has not requested permission from OAH to file an amended complaint. Absent an amended complaint, District is correct that the issues for hearing are limited to events and conduct occurring prior to the April 8, 2014 filing date of the complaint. Accordingly, the motion of District to limit the issues to events and conduct that occurred prior to April 8, 2014 is granted.

This order does not limit Student's right to amend the complaint under the procedure set forth in Education Code section 56502, subdivision (e). Neither does this order limit the discretion of the administrative law judge presiding at the due process hearing to (i) determine whether to admit evidence of events or conduct occurring after April 8, 2014, or (ii) in the event Student prevails, craft a remedy that takes into account Student's educational needs through the date of the decision.

IT IS SO ORDERED.

DATE: August 18, 2014

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings