

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

v.

SEQUOIA UNION HIGH SCHOOL
DISTRICT,

OAH CASE NO. 2010100554

SEQUOIA UNION HIGH SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2010071307

ORDER GRANTING REQUEST FOR
RECONSIDERATION, AFFIRMING
ORDER GRANTING PERMISSION FOR
STUDENT TO FILE AMENDED
COMPLAINT

On December 20, 2010, the undersigned administrative law judge issued an order granting Student's request to file an amended complaint and deemed the amended complaint filed as of the date of the order. On December 22, 2010, Eugene Whitlock, attorney for the Sequoia Union High School District, filed a motion for reconsideration. On December 22, 2010, David H. Tollner, attorney for Student, filed a response to District's motion.

APPLICABLE LAW

The Office of Administrative Hearings (OAH) will generally reconsider a ruling upon a showing of new or different facts, circumstances, or law justifying reconsideration, when the party seeks reconsideration within a reasonable period of time. (See, e.g., Gov. Code, § 11521; Code Civ. Proc., § 1008.) The party seeking reconsideration may also be required to provide an explanation for its failure to previously provide the different facts, circumstances or law. (See *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1199-1200.)

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).) The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. §1415(c)(2)(E)(ii).)

DISCUSSION

District contends that it was denied an opportunity to oppose Student's request to amend his complaint because Student did not properly caption the pleading as a request to amend and did not make an affirmative request for permission to file an amended complaint. District further contends that its counsel was out of the country from December 10 through December 19, 2010, which denied District of notice that Student had filed an amended complaint. District's contention that it was denied notice due to unavailability of counsel is not persuasive, as counsel for District is employed in an office with staff and other attorneys who practice special education litigation. Counsel is expected to manage his caseload even when he is unavailable.¹ However, District's request for reconsideration is granted on the grounds that it may not have understood that Student's filing of an amended complaint constituted a request to amend.

District's first contention as to why Student should not be allowed to file an amended complaint is that District has not agreed.² As set forth above, OAH may grant permission for a party to file an amended complaint if it is more than five days prior to the due process hearing date. Here, Student's amended complaint was filed over one month prior to the due process hearing dates. Furthermore, an amended complaint promotes judicial economy and prevents multiple actions between the parties on the same factual allegations. Accordingly, District's contention, that its permission is required, is not persuasive.

District further contends that Student should not be allowed to amend his complaint because District opposes any delays to the due process hearing that would be caused by the resetting of the 45-day timeline to render a decision upon the filing of an amended complaint. District further contends that even if the complaint is amended, the previously set hearing dates of January 18 through 20, 2011, should remain on calendar. Because the amended complaint was deemed filed on December 20, 2010, the previously set hearing dates would have fallen during the 30-day resolution session period. Here, the parties did not agree to a waiver of the resolution session and an acceleration of the hearing dates. Accordingly, District's request to maintain the January 18 through 20, 2011, hearing dates is denied.

¹ This is should not be construed to mean that a sole practitioner without staff would have grounds for reconsideration due to unavailability. Reconsideration is determined on a case-by-case basis.

² This was the same position raised by District in its December 20, 2010 motion to strike the amended complaint. District's motion to strike the amended complaint was denied on December 24, 2010.

On reconsideration, the December 20, 2010 order granting Student leave to amend and deeming the amended complaint filed on the date of the order, is affirmed.

ORDER

1. District's request for reconsideration of the December 20, 2010 order granting Student permission to file an amended complaint is granted.

2. On reconsideration, the December 20, 2010 order granting permission for Student to file an amended complaint, deeming the complaint filed and resetting the 45-day time line to issue a written decision, is affirmed. The matter will proceed as currently scheduled.

Dated: December 28, 2010

/s/

BOB VARMA
Administrative Law Judge
Office of Administrative Hearings