

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENTS ON BEHALF OF STUDENT, v. ALHAMBRA UNIFIED SCHOOL DISTRICT,	OAH Case No. 2014020448
ALHAMBRA UNIFIED SCHOOL DISTRICT, v. PARENTS ON BEHALF OF STUDENT.	OAH Case No. 2013090186 ORDER FOLLOWING PHC AND GRANTING STUDENT’S MOTION TO FILE FIRST AMENDED COMPLAINT

On April 7, 2014, a telephonic prehearing conference (PHC) was commenced before Administrative Law Judge (ALJ) Robert G. Martin, Office of Administrative Hearings (OAH). Steven Wyner, Esq. appeared on behalf of Student (Student), and Whitney Spatz, Esq. was present with Mr. Wyner. Cole Dalton, Esq. appeared on behalf of Alhambra Unified School District (District). The PHC was recorded.

On September 9, 2013, District filed its due process complaint naming Student. On February 11, 2014, Student filed his due process complaint (complaint) naming District. The hearing of these consolidated matters was subsequently set for April 14, 2014. On April 3, 2014, Student filed a motion for leave to amend Student’s due process complaint and to file first amended due process complaint. On April 7, 2014, District filed an opposition to Student’s motion, and, also on April 7, 2014, Student filed a reply in support of Student’s motion.

At the commencement of the PHC, the ALJ heard Student’s motion for leave to amend. For the reasons set forth below, the ALJ granted Student’s motion to amend and ordered the PHC and due process hearing in this matter to be continued to dates to be set in a scheduling order issued by OAH based on filing of Student’s amended complaint as of April 7, 2014.

APPLICABLE LAW AND DISCUSSION

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).)

Student's motion was opposed by District, but heard seven days before the hearing of the matter, within the time period in which the ALJ could grant Student permission to amend his complaint. Student proposed five amendments. First, an amendment alleging that District denied Student a free appropriate public education (FAPE) by failing to offer Student a placement in a resource classroom or special day class where Student could avoid bullying by general education students. This was to replace an allegation in the complaint that District denied Student a FAPE by failing to place him in at the Frostig School (Frostig), a non-public school. Second and third, Student added allegations supporting Student's claim for reimbursement of the costs of Student's private placement at Frostig, including allegations that Student had made some educational progress but has not met the requirements to graduate from the District with a high school diploma.² Fourth, Student revised his requests for relief. Fifth, Student alleged that the usual two-year statute of limitations applicable in special education matters should be extended based on alleged had specific misrepresentations by the District that it had solved the bullying problem forming the basis for the due process request. District opposed Student's motion on grounds: (1) that District would be prejudiced by an amendment because the matter would not be heard until after Student's graduation date, and District in the meantime would not have access pertaining to Student's class schedule and credits at Frostig; (2) Student did not show good cause for not having included the amended claims in Student's initial complaint; and (3) the alleged misrepresentations by District lacked specificity sufficient to sustain a claim that the statute of limitations should be extended, and therefore were insufficient grounds to justify an amendment.

While District may experience some prejudice due to the delay in prosecuting District's case, the potential prejudice was not as great as it otherwise might have been because District was neither educating Student (which might lead to further FAPE claims), nor paying for Student's placement at Frostig. The benefit of litigating all of Student's claims in one action to avoid possible inconsistent rulings, promote judicial economy and conserve the parties' litigation resources therefore outweighed any prejudice to District. Regarding Student's failure to include the proposed amended claims in the initial complaint,

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

² Student is 18 years old. Student's parents enrolled him at Frostig in August 2013.

while certain of Student's amended claims arguably should have been known to Student at the time of the initial complaint, others, such as Student's grades and graduation status at Frostig, involve new facts. Also, some latitude is warranted as this is Student's first request to amend. Finally, having determined that some of Student's proposed amendments are sufficient to sustain Student's request, it was not necessary to determine whether others, such as Student's allegations regarding District misrepresentations, are insufficient. Accordingly, Student's motion for leave to amend was granted at the PHC. However, further continuances of the consolidated matter is not contemplated.

ORDER

1. Student's motion for leave to amend the complaint is granted as of April 7, 2014.
2. The amended complaint is deemed filed on April 7, 2014.
3. The scheduled due process hearing dates commencing on April 14, 2014 are vacated.
4. All applicable timelines are reset as of April 7, 2014, and OAH will issue a scheduling order with new dates based on the filing of the amended complaint as of that date.
5. The prehearing conference commenced on April 7, 2014 will be completed on the date set forth in the scheduling order.

IT IS SO ORDERED.

DATE: April 08, 2014

/s/

ROBERT G. MARTIN
Administrative Law Judge
Office of Administrative Hearings