BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: LOWELL JOINT SCHOOL DISTRICT, v. PARENTS ON BEHALF OF STUDENT,	OAH Case No. 2015100100
PARENTS ON BEHALF OF STUDENT, v. LOWELL JOINT SCHOOL DISTRICT.	OAH Case No. 2015100387 ORDER FOLLOWING PREHEARING CONFERENCE AND GRANTING DISTRICT'S MOTION TO AMEND

On November 23, 2015, a telephonic prehearing conference was held before Administrative Law Judge Marian H. Tully, Office of Administrative Hearings. Attorney Jennifer Guze Campbell and Jessica Villegas appeared on behalf of Student. Attorney Adam J. Newman appeared on behalf of Lowell Joint School District (District). The PHC was recorded.

Based upon discussion with the parties, the ALJ issues the following order:

1. Motion to Amend. District filed a Request for Due Process on October 2, 2015. Student filed a Request for Due Process and a motion to consolidate the two cases on October 9, 2015. The consolidated matter was set for due process hearing on December 3, 2015.

District timely filed an Amended Request for Due Process on November 13, 2015. Student filed an opposition to the motion to amend on November 20, 2015.

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).)

The issues in the consolidated matters concern assessments conducted as part of a comprehensive evaluation of Student in April and May of 2015. The issues in the amended complaint concern whether IEP's dated April 22, 2015, May 18, 2015, and October 8, 2015,

offered Student a FAPE. District contends, based on the recent Ninth Circuit decision published November 17, 2015, in *L.R. a minor by E.N. v. Los Angeles Unified School District*, No 13-56211, that District's complaint should be amended to state the newly alleged issues. Student opposes the amendment arguing that the amendment unreasonably delays the consolidated matter and that District should be required to file the action separately. Student does not state any actual prejudice that would result from resetting the timelines based upon the amended complaint. Accordingly, on the authority of *L.R.,* and Education Code section 56346(f), the motion to amend is granted.

The motion to amend is timely and is granted. The amended complaint shall be deemed filed on the date of this order. All applicable timelines shall be reset as of the date of this order. OAH will issue a scheduling order with the new dates.

2. Settlement. The parties are encouraged to continue working together to reach an agreement before the due process hearing. The parties shall inform OAH in writing immediately should they reach a settlement or otherwise resolve the dispute before the scheduled hearing. In addition, if a settlement is reached within five days of the scheduled start of the due process hearing, the parties shall also inform OAH of the settlement by telephone at (916) 263-0880.

IF A FULL AND FINAL WRITTEN SETTLEMENT AGREEMENT IS REACHED AFTER 5:00 P.M. THE DAY PRIOR TO HEARING, THE PARTIES SHALL LEAVE A VOICEMAIL MESSAGE REGARDING THE SETTLEMENT AT (916) 274-6035. THE PARTIES SHOULD ALSO LEAVE CONTACT INFORMATION SUCH AS CELLULAR PHONE NUMBERS OF EACH PARTY OR COUNSEL FOR EACH PARTY. THE PARTIES SHOULD SIMULTANEOUSLY FAX THE SIGNATURE PAGE OF THE SIGNED AGREEMENT OR A LETTER WITHDRAWING THE CASE TO THE OAH AT THE FAXINATION LINE at 916-376-6319.

Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received by OAH. If an agreement in principle is reached, the parties should plan to attend the scheduled hearing unless different arrangements have been agreed upon by the assigned ALJ. The assigned ALJ will check for messages the evening prior to the hearing or the morning of the hearing.

IT IS SO ORDERED.

DATE: November 23, 2015

/s/

MARIAN H. TULLY
Administrative Law Judge
Office of Administrative Hearings