BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

ACADEMY OF ALAMEDA.

OAH CASE NUMBER 2021020854

ORDER GRANTING REQUEST FOR RECONSIDERATION AND UPON RECONSIDERATION, AFFIRMING PRIOR ORDER

MAY 25, 2021

On May 18, 2021, the undersigned Administrative Law Judge issued an order permitting Student to file an amended complaint adding a new party. The Order deemed the amendment filed as of May 18, 2021.

On May 20, 2021, Student filed a motion for reconsideration, seeking that the amended complaint should be deemed to have been filed on February 23, 2021, the date the original complaint was filed. Student argued that the amended complaint adding the new party should be deemed to "relate back" to the original filing date for statute of limitations purposes. Student's counsel explained that she had originally filed

against a wrong party as a result of excusable circumstances, which the amendment corrected.

The Office of Administrative Hearings did not receive a response to the motion.

APPLICABLE LAW

The Office of Administrative Hearings 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, generally within ten days. (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.)

The IDEA and Education Code require that either party must provide the due process complaint notice to the other party. (20 U.S.C. § 1415, subd. (b)(7)(A); Ed. Code, § 56502, subd. (c)(1).) A party "may not have a due process hearing until the party, or the attorney representing the party, files a notice." (20 U.S.C. § 1415, subd. (b)(7)(B).)

Both the IDEA and the Education Code further specify that when a complaint is amended, "the applicable timeline for a due process hearing . . . shall recommence at the time the party files an amended notice. . . ." (20 U.S.C., § 1415, subd. (c)(2)(E)(ii); Ed. Code, § 56502, subd. (e).)

The IDEA and state law further state that a parent or agency shall request an impartial due process hearing within two years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the complaint. (20 U.S.C. §1415(f)(3)(C); Ed. Code, § 56505, subd. (l).)

DISCUSSION

Student offers new facts, circumstances and law, and therefore the motion for reconsideration is granted. However, as explained below, upon reconsideration, Student's arguments are rejected and the May 18, 2021 Order is hereby reaffirmed.

Student argues that it should be excused from naming the wrong party originally, and permitted to bring in the correct party, with the applicable date of the notice to the new party deemed as if it had been originally named. Student cites cases arising under the California Code of Civil Procedure section 473, subdivision (a)(1) which states in relevant part: "The court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading or proceeding by adding or striking out the name of any party, or by correcting a mistake in the name of a party. . . ." Some of the cases cited by Student do allow an amendment naming a new party to relate back to the original filing date for statute of limitations purposes, depending on whether the amendment corrects a mistake that is "merely a misnomer" or instead constitutes an "entire change of parties." (See, e.g. *Hawkins v. Pacific Coast Building Products, (2004)* 124 Cal.App.4th 1497.)

The case law on which Student relies is unpersuasive here. There is no clear distinction between a "mere misnomer" and a "entire change of party," nor are the respondent's rights to notice and due process addressed. As Student's motion concedes, the critical inquiry is whether the defendant had adequate notice of the claim based on the original pleading. Here, the new respondent was not served with the original pleading and therefore cannot have had adequate notice of it. As Student further concedes, an amended complaint that adds a new party does not relate back to the date of filing of the original complaint and the statute of limitations is applied as of the date the amended complaint is filed, not the date the original complaint is filed.

Student's contention is unpersuasive, that an exception should be applied here based on cases interpreting the Code of Civil Procedure. Except by analogy in appropriate circumstances, special education due process proceedings are not governed by the Code of Civil Procedure. Instead, the explicit procedural requirements of the IDEA and Education Code govern. These explicitly require notice, state when an amendment shall be deemed filed, and contain no exceptions for late notice to a new party because of the claimant's excusable circumstances when naming the wrong party originally.

ORDER

On reconsideration, the May 18, 2021 Order granting the motion to amend to add a party is reaffirmed, and the amendment deemed filed as of the date of that Oder. All dates set in this matter are confirmed.

IT IS SO ORDERED.

June Lehrman

June Lehrman
Administrative Law Judge
Office of Administrative Hearings