BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENTS ON BEHALF OF STUDENT, v. SAN MARCOS UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018080080
SAN MARCOS UNIFIED SCHOOL DISTRICT, v. PARENTS ON BEHALF OF STUDENT.	OAH Case No. 2018100028 ORDER FOLLOWING PREHEARING CONFERENCE; ORDER GRANTING MOTION TO AMEND COMPLAINT

On October 15, 2018, Administrative Law Judge Darrell Lepkowsky, Office of Administrative Hearings, convened a prehearing conference in this consolidated matter. Attorney Sarah Orloff appeared on behalf of San Marcos Unified School District. Attorney Soo Yun appeared on behalf of Student and his parents. The ALJ recorded the PHC.

Student filed a request for due process hearing (complaint) with OAH on August 2, 2018, naming San Marcos Unified School District. On September 28, 2018, San Marcos filed a complaint naming Student. OAH granted San Marcos's unopposed motion to consolidate the two cases on October 5, 2018.

Student filed a motion to amend his complaint on October 11, 2018. Student seeks to add allegations that were not clear in his original complaint. At the prehearing conference, San Marcos orally stated that it opposed the motion to amend as Student was raising issues that could have been raised in the original complaint. San Marcos also argued that at least some of the new issues were vague and/or may be moot.

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).)

Although Student may have been able to raise the new issues in the amended complaint, he was not required to do so. The Individuals with Disabilities Education Act and state law contain language that modifies the general analysis with regard to res judicata and collateral estoppel under some circumstances. The IDEA specifically states that nothing in the Act shall be construed to preclude a parent from filing a due process complaint on an issue separate from a due process complaint already filed. (20 U.S.C. § 1415(o); 34 C.F.R. § 300.513(c) (2006); Ed Code, § 56509.) Therefore, although parties are precluded from re-litigating issues already heard in previous due process proceedings, parents are not precluded from filing a new due process complaint on issues that could have been raised and heard in the first case, but were not. By analogy, there is no impediment to a parent raising issues in an amended complaint that could have been raised in the original complaint.

With regard to San Marcos's argument that some or all of the new issues in Student's amended complaint are vague and/or moot, those are arguments properly raised outside the context of a party's opposition to a motion to amend.

Student's motion to amend is timely. This is the first time Student moves to amend his complaint. There is no evidence that the motion to amend is for the purpose to delay the proceedings. For these reasons, as well as those stated above, Student's motion to amend is GRANTED. All applicable timelines shall be reset as of the date of this order. OAH will issue a scheduling order with the new dates. As OAH previously continued this matter on August 30, 2018, any additional continuance must establish good cause by way of declaration. Finally, since the timelines restart based on Student's motion to amend, Student's case is now deemed the primary case in this consolidated matter.

IT IS SO ORDERED.

DATE: October 15, 2018

DocuSigned by:
Darrell Lepkowsky
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DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings