BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. BERKELEY UNIFIED SCHOOL DISTRICT AND NORTH REGION SPECIAL EDUCATION LOCAL PLAN AREA.	OAH Case No. 2017020569 ORDER GRANTING MOTION TO AMEND COMPLAINT AND DENYING RESPONDENT'S MOTION FOR SANCTIONS.

On February 13, 2017, Student filed a Due Process Hearing Request (complaint) with the Office of Administrative Hearings, naming Berkeley Unified School District and North Region Special Education Local Plan Area. On March 8, 2017, Student filed a motion asking that the matter be dismissed, without prejudice and all dates in the matter vacated. Student's motion states that the parties had reached an agreement which was subject to approval by Berkeley's school board. The motion also stated that after the anticipated school board approval, Student would request that the matter be dismissed with prejudice. On March 13, 2017, Division Presiding Administrative Law Judge Bob Varma issued an order vacating all dates in the matter and set a status conference with the parties for April 5, 2017. The matter was not dismissed at that time because the matter was not settled or withdrawn in its entirety.

On March 21, 2017, Student filed a motion to amend his complaint in this matter and noted in both the motion to amend and a letter to Respondent's and OAH dated March 20, 2017, that Student's parents were rescinding the settlement agreement. On March 22, Berkeley and North Region filed an opposition to the motion to amend and a request for sanctions. On March 21, 2017, Student filed a reply brief. A copy of a page of the settlement has been submitted. Under Section 10, titled Effective Date, the settlement reads "This Agreement shall be effective upon ratification by the District's Governing Board."

On March 23, 2017, Respondents filed a further reply and declaration stating that the Board had approved the settlement agreement on March 22, 2017.

Generally, Student claims that the settlement agreement was not fully executed and therefore he could rescind agreement at any time before full execution. Respondents generally claim that the requirement for board approval was a condition precedent to its enforcement but that the settlement is binding and cannot be repudiated. Respondents claim that "an offer by a district, accepted by a petitioner, the terms of which are reduced to writing

and executed by the petitioner's legal representative and representatives of the district is fully binding on both parties pending Board ratification." Respondents cite California Civil Code section 1565 which states that free and mutual consent is all that is required to make a contract valid. Respondent also likens the board approval to a condition precedent and argue that "A conditional obligation is one in which 'the rights or duties of any party thereto depend on the occurrence of an uncertain event.'…A condition in a contract may be a condition precedent, concurrent or subsequent. '[A] condition precedent is either an act of a party that must be performed or an uncertain event that must happen before the contractual right accrues or the contractual duty arises." (*JMR Construction Corp. Environmental Assessment & Remediation Management, Inc.* (2015) 243 Cal. APP.4th 571, 593.)

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 motion to amend is timely and is granted. The amended complaint shall be deemed filed on the date of this order. As of the time that the motion to amend was filed, the case was still open and had not been dismissed. Respondent's various arguments against the amendment fail. The agreement was not fully executed when Student rescinded. Respondents argue that the settlement is binding and cannot be repudiated, however the agreement was not fully executed when Student rescinded his agreement to the settlement. If Respondent's argument were valid, then there would be no need for Board approval, as the agreement would already be binding. The Board could reject the agreement, having the effect that the matter would proceed to a hearing regardless of Student's agreement to the settlement terms. Respondent therefore argues that the agreement should be binding only on Student and has offered no legal authority for this position.

Further, the argument that Board approval is like a condition precedent also fails. A Condition precedent refers to terms in a contract not the execution of the contract itself. There is no contract until the terms are agreed to by both parties and Berkeley's School Board had not yet agreed to the terms at the time Student rescinded. The Agreement clearly states that it is not effective until the Board ratifies it. Respondent's also argue that there was an offer and acceptance and therefore, a contract exists. However, the requirement for Board approval shows that there had not been acceptance on the part of Berkeley at the time Student rescinded. When parties fail to fully execute a settlement at the same time, the risk of one party changing their mind before an agreement is fully executed is exactly the risk that the party who waits to execute takes.

All applicable timelines shall be reset as of the date of this order. OAH will issue a scheduling order with the new dates. Because the amendment was proper and granted, the motion for sanctions is denied.

IT IS SO ORDERED.

DATE: March 28, 2017

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Margaret Broussard
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MARGARET BROUSSARD
Presiding Administrative Law Judge
Office of Administrative Hearings