BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

OAKLAND UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021040489

ORDER DENYING MOTION TO AMEND COMPLAINT

AUGUST 18, 2021

On April 13, 2021, Parents on behalf of Student filed a due process hearing request, referred to as a complaint, with the Office of Administrative Hearings, naming Oakland Unified School District. The Office of Administrative Hearings is referred to as OAH. On August 13, 2021, Student filed a motion to amend the due process hearing request and an amended complaint, to add a claim under a new statute effective July 1, 2021. On August 16, 2021, Oakland filed an opposition contending that the new statute is not within OAH jurisdiction.

An amended complaint may be filed when the other party consents in writing and is given the opportunity to resolve the complaint through a resolution session, or when the hearing officer grants permission. The hearing officer may grant permission at any time more than five days before 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 purpose of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.), referred to as the IDEA, is to ensure that all children with disabilities have available to them a free appropriate public education, called a FAPE, and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a).) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified School. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

Here, Student's amended complaint adds a claim that Oakland violated AB 104, which was effective July 1, 2021 after the original complaint was filed, requiring school districts to develop a policy to consult with parents after receiving a written retention consultation request from the parent. Student alleges that Oakland did not follow the spirit or the letter of AB 104 by failing to properly consider parents' request that Student be retained in the 5th grade. Student alleges that Oakland predetermined the result of the retention consultation. Oakland contends that enforcement of AB 104 is not within OAH jurisdiction. It also contends that an amendment at this late date will delay the hearing and result in harm to Student, as the sworn declaration of counsel states that the 2021-2022 school year has started and Parents are refusing to send their child to school until an OAH decision is rendered.

Whether or not Oakland followed the spirit or the letter of AB 104 is not within the jurisdiction of OAH. However, whether or not Oakland offered Student a FAPE after April 2019 is at issue in the original complaint. Student will have an opportunity to show

that the offered placement in 6th grade for the 2021-2022 does not provide Student with a FAPE without the need for an amended complaint. A retention consultation is not an individualized education program team meeting, or other meeting, under the IDEA, and OAH does not have jurisdiction to determine if Oakland properly complied with the requirements of AB 104. In addition, any delay in hearing will harm Student, who is not in school pending a decision in this due process proceeding.

The proposed amended complaint adds no further claims under the IDEA or California special education laws and regulations. The motion to amend is denied. All dates shall remain on calendar.

IT IS SO ORDERED.

Alexa Hohensee

Alexa Hohensee
Administrative Law Judge
Office of Administrative Hearings