BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. AVESON GLOBAL LEADERSHIP ACADEMY .	OAH Case No. 2018110119 ORDER DENYING MOTION TO AMEND COMPLAINT
AVESON GLOBAL LEADERSHIP ACADEMY, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2019010133

On November 2, 2018, Parent on behalf of Student, filed a Due Process Hearing Request (complaint) with the Office of Administrative Hearings, naming Aveson Global Leadership Academy as respondent. On January 4, 2019, Aveson filed a Request for Due Process Hearing naming Parent on behalf of Student as respondent. Pursuant to a joint motion, the cases were consolidated on January 11, 2019. A Prehearing Conference was held in the case on March 29, 2019 at which time hearing was scheduled for mid-April 2019. On April 11, 2019, the parties jointly requsted a continuance of the hearing, due to Student's counsel's hearing conflict, and the case was re-scheduled for hearing beginning May 14, 2019.

On May 3, 2019, Aveson filed a Motion to Amend its Due Process Hearing Request (amended complaint) in order to add claims that an April 16, 2019 IEP offered Student a free, appropriate public education. Aveson asserts a number of factual points related to the scheduling and conduct of the April 16, 2019 IEP, which are disputed by Student, and bases its motion to amend, in part, on the acceptance of its factual assertions as true. Aveson's motion also asserts that consideration of the April 16, 2019 IEP is "necessary for Aveson's defense given that, in Student's Response [presumably to Aveson's original complaint] she has alleged that the addendum IEP of November 2018 does not fully and completely make an offer of placement or transition." Aveson asserts in its motion to amend that it disagrees with Student's response but offers the April 2019 IEP as a document that "includes all

necessary component of a special education program including placement AND a revised transition plan." [Emphasis in original.]

Student opposed Aveson's request to amend on May 6, 2019 asserting that the determination of the April 16, 2019 IEP could be done separately, without prejudicing Aveson, as the April 16, 2019 IEP adjudication did not relate to the issues already included in the consolidated actions. Student asserts that, at this late date, they have prepared most of their case and secured the attendance of witnesses so they will be prejudiced by the delay and schedule change that would necessarily result from allowing Aveson to add claims pertaining to an additional IEP at this juncture noting that Student has been paying out of pocket for a private placement since the fall of 2018.

APPLICABLE LAW

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).)

DISCUSSION

A timely motion to amend a complaint is not automatically granted in the face of opposition. The potential prejudice of delay, the expense of multiple hearings and judicial economy are weighed. Here, Student raises reasonable points regarding the impact the delay resulting from this late amendment will have on Student. Student filed her case in November of 2018 and cooperated in moving to consolidate the cases in January. Two continuances have already been granted. She has prepared for the hearing scheduled to begin next week, on May 14, 2019. Now, 11 days before the hearing is scheduled to begin, Aveson has asked to amend their complaint to include the evaluation of the merits of another IEP, conducted just two and a half weeks prior to the motion to amend; arguing that this IEP will correct any past errors of the IEPs already to be considered at the hearing. Allowing such tactics could result in endless requests to amend.

Aveson's motion to amend is DENIED. The hearing shall proceed on the dates currently scheduled.

IT IS SO ORDERED.

DATE: May 7, 2019

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Penelope S. Pahl
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PENELOPE S. PAHL
Administrative Law Judge
Office of Administrative Hearings