

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

BAKERSFIELD CITY SCHOOL
DISTRICT, GREENFIELD UNION
SCHOOL DISTRICT AND KERN
COUNTY SUPERINTENDENT OF
SCHOOLS.

OAH CASE NO. 2014040234

ORDER GRANTING DISTRICTS'
MOTION TO LIMIT ISSUES 3 AND 4
OF STUDENT'S COMPLAINT

On April 2, 2014, Student filed a due process hearing request (complaint) against Bakersfield City School District (Bakersfield), Greenfield Union School District (Greenfield) and Kern County Superintendent of Schools (Superintendent).

On August 4, 2014, all parties participated in a prehearing conference (PHC). On April 5, 2014, Greenfield and Kern filed a motion to limit the timelines for hearing as to Issues 3 and 4 as identified in the PHC order, dated August 4, 2014 (PHC Order).¹

APPLICABLE LAW

Parents have 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 free appropriate public education to such child.” (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a).) However, “the party requesting the due process hearing shall not be allowed to raise issues at the due process hearing that were not raised in the [complaint], unless the other party agrees otherwise.” (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) A complaint may be amended at any time prior to five days before the hearing if the other party agrees or the hearing officer grants permission. (20 U.S.C. § 1415(f)(1)(B); Ed. Code, § 56502, subd. (e).) However, amendment of the complaint will restart all decision timelines in order to permit the parties an opportunity to attend a resolution session. (See *Ibid.* & Ed. Code, § 56501.5 [describing mandatory resolution session before parties can proceed to a due process hearing].)

¹ The issues are identified in paragraph 2 of the PHC Order as Issues (a) through (d). However, as each of the four issues stands alone, for purposes of this order Issues (c) and (d) will be referred to as Issues 3 and 4, consistent with the districts' motion.

DISCUSSION

The PHC Order restated the issues raised by Student's complaint for clarity. Issues 3 and 4, against Greenfield and Kern only, were stated as follows:

[3.] Did Greenfield and Superintendent deny Student a FAPE from March 31, 2014, by failing to provide Student a one-to-one aide?

[4.] Did Greenfield and Superintendent deny Student's parents the right to meaningfully participate in educational decision making by unilaterally changing Student's placement without prior written notice and without offering transportation for Student?

District contends that Student, through his filings and correspondence with the District, intends to expand the hearing issues to events that occurred after the April 2, 2014 filing date. In other words, Student intends for the issues at hearing to encompass not only those events and actions described in the complaint, but events and actions that have occurred through the date of the hearing.

Here, Student has not requested permission from OAH to file an amended complaint. Absent an amended complaint, District is correct that the issues for hearing are limited to events and conduct occurring prior to the April 2, 2014 filing date of the complaint. Accordingly, the motion of Greenfield and Kern to limit the issues to events and conduct that occurred prior to April 2, 2014 is granted.

This order does not limit Student's right to amend the complaint under the procedure set forth in Education Code section 56502, subdivision (e). Neither does this order limit the discretion of the administrative law judge presiding at the due process hearing in (i) determining whether to admit evidence of events or conduct occurring after April 2, 2014 in deciding the issues as stated or (ii) in the event Student prevails, crafting a remedy that takes into account Student's educational needs through the date of the decision.

IT IS SO ORDERED.

DATE: August 6, 2014

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings