

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MENIFEE UNION SCHOOL DISTRICT.

OAH Case No. 2018081201

ORDER FOLLOWING PREHEARING
CONFERENCE, GRANTING
STUDENT'S MOTION TO AMEND,
AND GRANTING MENIFEE'S
MOTION TO DISMISS ISSUE SIX

On March 11, 2019, a telephonic prehearing conference was held before Administrative Law Judge Linda Johnson, Office of Administrative Hearings. Tania Whiteleather, Attorney at Law, appeared on behalf of Student. Cynthia Vargas, Attorney at Law, appeared on behalf of Meniffee Union School District. The PHC was recorded.

Based upon discussion with the parties, the ALJ issues the following order:

1. Motion to Amend. On February 28, 2019, Student filed a motion to amend his due process complaint to include a new issue. Meniffee does not oppose Student's motion.

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. All applicable timelines shall be reset as of the date of this order. OAH will issue a scheduling order with the new dates. As this case was filed on August 29, 2019, this case takes precedent over any later filed case, and parties should be prepared to go to hearing on the dates in the following scheduling order.

2. Motion to Dismiss Issue Six. On March 8, 2019, Meniffee file a motion to dismiss Issue Six of Student's amended complaint alleging that the issue was identical to Issue Five in Student's original complaint that OAH already dismissed for lack of jurisdiction. Student's Issue Six alleges that Meniffee violated his rights under Section 504 of the Rehabilitation Act of 1973, the Americans with Disability Act, and state civil rights laws. This issue is identical to Issue Five of Student's original complaint.

The purpose of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et seq.) is to “ensure that all children with disabilities have available to them a free appropriate public education”, 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 free appropriate public education to such child.” (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

OAH does not have jurisdiction to entertain claims based on Section 504 of the Rehabilitation Act of 1973 (Section 504) (29 U.S.C. § 701 et seq.) /Section 1983 of Title 42 United States Code (Section 1983), the Americans with Disability Act (ADA) (Title 42 U.S.C. §§ 1201, et seq.), or state civil rights laws. Menifee’s motion to dismiss Issue Six is granted.

3. Notice to Witnesses. The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure that the witnesses will be available to testify. A witness will not be regarded as unavailable for purposes of showing good cause to continue the hearing if the witness was not properly notified of the hearing date or properly subpoenaed, as applicable.

4. Settlement. The parties are encouraged to continue working together to reach an agreement before the due process hearing. The parties shall inform OAH in writing immediately should they reach a settlement or otherwise resolve the dispute before the scheduled PHC and hearing dates. Dates for the PHC and hearing will not be cancelled unless Student withdraws his case or otherwise requests a dismissal, or unless otherwise ordered.

IT IS SO ORDERED.

DocuSigned by:

Linda Johnson

LINDA JOHNSON

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Administrative Law Judge

Office of Administrative Hearings