BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

MANHATTAN BEACH UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2022100633

ORDER DENYING DISTRICT'S MOTION TO LIMIT ISSUES AND DENYING STUDENT'S MOTION TO CONSOLIDATE

JANUARY 30, 2023

DISTRICT'S MOTION TO LIMIT ISSUES

Student filed his due process request, called the Complaint, in this matter with the Office of Administrative Hearings, called OAH, on October 20, 2022. The prehearing conference, called the PHC, was held in this case on January 20, 2023, before the undersigned ALJ. At the PHC, after discussion by the parties, the ALJ clarified and reframed Student's issues as follows:

"1. Did Manhattan Beach Unified School District deny Student a free appropriate public education, called a FAPE, in the individualized education program, called an IEP. dated October 30, 2020, by failing to offer Student:
   a. an appropriate placement, specifically, a small educational setting that provided in-person individualized instruction; and
   b. appropriate related services, specifically, in the areas of counseling, speech and language, and educational therapy?
2. Did Manhattan Beach Unified School District deny Student a FAPE in the IEP dated October 28, 2021, by failing to offer Student:
   a. an appropriate placement, specifically, a small educational setting that provided in-person individualized instruction; and
   b. appropriate related services, specifically, in the areas of counseling, speech and language, and educational therapy?"

At the PHC Manhattan Beach Unified School District's attorney objected to the identification of the specific areas of the related services in Student's issues as speech and language and educational therapy. The ALJ denied district's objection and informed its attorney he could file a written objection to the ALJs' framing of the issues. The hearing in this case is scheduled to commence on January 31, 2023 at 9:30 AM.

On January 23, 2023, Manhattan Beach Unified School District filed its Motion to Limit Issues with OAH, on the ground that, because Student's complaint had not specifically and sufficiently alleged that the services which district failed to offer Student were in the areas of speech and language, and educational therapy, Student's claims regarding service in those areas should be stricken from Student's issues for hearing. Manhattan Beach Unified School District demonstrated good cause for not filing its motion at least three business days before the PHC.

Regardless of the title of district's motion to limit issues, that motion did not actually seek to limit Student's issues, but to strike Student's claims to seek reimbursement for services in the areas of speech and language and educational therapy because the complaint failed to sufficiently plead the district's failure to offer those particular services. District's motion to limit issues is actually an untimely notice of insufficiency, which claims Student's Complaint did not sufficiently identify the services at issue as being in the areas of speech and language and educational therapy.

Student did not oppose the motion to limit issues, but instead filed a new case, called the Second Case, with OAH. OAH has not yet assigned a case number to the Second Case. In the Second Case Student seeks reimbursement for the cost of speech and language services, and educational therapy services Parents obtained and paid for during the same time period that applies to this case. On January 26, 2023, Student filed a motion to consolidate this case with the Second Case. On January 27, 2023, Manhattan Beach Unified School District filed a notice of intent to oppose motion to consolidate, asking OAH to refrain from ruling on Student's motion to consolidate until three business days after Student filed that motion had elapsed.

Student's complaint in this case alleged,"[a]t all times between since November 1, 2020, the District has failed to provide [Student] with a placement, program and services, appropriate to meet his disability-related academic and social-emotional needs." See, Complaint at p. 6, ll. 4-6. Student's complaint further alleges in its proposed resolutions that Student "… and his parents are entitled to reimbursement for the costs, including transportation costs, of any tuition, services, interventions, programs, therapies, and assessments found to be necessary and appropriate to meet his needs, and obtained at private expense." See, Complaint at p. 6. , l. 28, p. 7, ll. 1-3.

Manhattan Beach Unified School District never filed a notice of insufficiency with OAH, challenging the sufficiency of the pleading of the Complaint. Instead, Manhattan Beach Unified School District filed its response to the complaint with OAH on October 25, 2022, and filed its corrected response to the complaint with OAH on October 26, 2022.

Both Student and Manhattan Beach Unified School District filed their prehearing conference statements timely before the January 20, 2023 PHC. Student's PHC statement identified Student's issue as "Did District deny [Student] FAPE by failing to provide him with a placement program and services appropriate to meet his disability-related academic and social-emotional needs?" Manhattan Beach Unified School District's PHC statement identified Student's issue as "Did the District deny [Student] FAPE by failing to provide him with a placement, program and services appropriate to meet his disability-related academic and socio-emotional needs?" Manhattan Beach Unified School District was clearly on notice Student claimed the district had not offered Student appropriate services, and that Student and Parents were seeking reimbursement for the cost of the services Parent had privately obtained on Student's behalf. If the district contended the complaint was too unclear to put it on notice of the area of the services at issue in this case, it should have filed a notice of insufficiency with OAH within ten days of the date the complaint was service on it. The district cannot remedy its failure to file a timely notice of insufficiency by now filing a motion complaining about the insufficiency of the pleadings and labeling that motion as a motion to limit issues.

Congress has imposed "minimal" pleading standards for due process hearings. Complaints need only set forth "a description of the nature of the problem" and "a proposed resolution of the problem to the extent known and available . . . at the time."

(20 U.S.C. §1415(b)(7)(B)(iii); *Schaffer ex rel. Schaffer v. Weast*, 126 S. Ct. 528, 532 (2005)). The complaint put district on notice that Student was seeking reimbursement for services Parent incurred on behalf of Student to provide him with a FAPE. Manhattan Beach Unified School District had an opportunity to ask what specific areas those services were in and the amount of the reimbursements sought for those services at both the resolution session and the mediation, which occurred on December 20, 2022.

The ALJ's identification at the January 20, 2023 PHC of the specific areas of services that Parents had obtained for Student narrowed the issues, and did not expand them. Therefore, Manhattan Beach Unified School District was not prejudiced by the ALJ's narrowing of Student's issues at the January 20, 2023 PHC. Consequently Manhattan Beach Unified School District's Motion to Limit Issues is denied.

STUDENT'S MOTION TO CONSOLIDATE

CONSOLIDATION

No statute or regulation specifically provides a standard to be applied in deciding a motion to consolidate special education cases. However, OAH will generally consolidate matters that involve the same parties, a common question of law and/or fact, and when consolidation of the matters furthers the interests of judicial economy by saving time or preventing inconsistent rulings. (See Gov. Code, § 11507.3, subd. (a) [administrative proceedings may be consolidated if they involve a common question of law or fact]; Code of Civ. Proc., § 1048, subd. (a) [same applies to civil cases].)

Because Manhattan Beach Unified School District filed its notice of intent to oppose the motion to consolidate, it is clear the district opposes Student's motion to consolidate, even though it has not yet filed its opposition to the motion with OAH. Here, this case and the Second Case involve the same parties and a common question

of law or fact, in that the complaints in both cases allege the district failed to offer Student sufficient services and Parents should be reimbursed for the services they privately obtained on Student's behalf. The pleadings of the Second Case merely more specifically identify the areas of those services as being speech and language and educational therapy. At the PHC in this case, after discussion with the parties, the ALJ appropriately narrowed the areas of the services at issue as speech and language, and educational therapy. There is no reason to consolidate this case with the Second Case. If Student wanted to add additional facts to the pleading of this case he should have timely filed a motion to amend the complaint in this case.

Student's motion to consolidate asks that the cases be consolidated and the hearings be re-set. Student's motion to consolidate appears to really be a motion to continue the hearing in this case.

Consolidation does not further the interests of judicial economy. Therefore, Student's motion to consolidate is denied.

Christine Arden

Christine Arden
Administrative Law Judge
Office of Administrative Hearings