BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: FAIRFIELD-SUISUN UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2016050221 ORDER DENYING MOTION TO AMEND COMPLAINT AND DENYING REQUEST TO CONSOLIDATE; AND NOTICE OF RECEIPT OF EX PARTE COMMUNICATION

On May 2, 2016, Fairfield-Suisun Unified School District filed a Due Process Hearing Request (complaint) with the Office of Administrative Hearings, naming Parent on behalf of Student. On May 4, 2016, Student filed a request for due process hearing which is pending as to Solano County Office of Education in OAH case number 2016050225. May 24, 2016, Fairfield-Suisun filed a combined motion to amend and a motion to consolidate.[1] On June 1, 2016, Student filed an opposition to both motions. Student did not include a proof of service with his opposition.

APPLICABLE LAW

Amended Complaint

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).)

[1] Solano County Office of Education also signed the motion to amend and to consolidate. However, Solano County is not a party to this action. Fairfield-Suisun is reminded that each motion or responding paper must be filed separately and include a proof of service.

Consolidation

Although no statute or regulation specifically provides a standard to be applied in deciding a motion to consolidate special education cases, OAH will generally consolidate matters that involve: a common question of law and/or fact; the same parties; 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].)

Prohibited Ex Parte Communications

Ex parte communications are not permitted while a due process proceeding is pending. "While special education due process hearing proceedings are pending there shall be no communication, direct or indirect, regarding any issue in the proceeding, to a hearing officer from an employee or representative of a party or from an interested person unless the communication is made on the record at the hearing." (Cal. Code. Regs., tit. 5, § 3084, subd. (a).) When an ex parte communication is received, the administrative law judge presiding over the matter must disclose the communication to all parties, make it part of the record, and allow the parties an opportunity to address the matter within 10 days of receipt of the notification of communication. (Cal. Code. Regs., tit. 5, § 3084, subds. (c)-(e).)

DISCUSSION

Fairfield-Suisun is not seeking to add additional claims or an additional party but rather is providing notice of its intent to withdraw one of its issues for hearing. Therefore, the motion to amend is denied. All previously set dates shall remain on calendar. At the scheduled prehearing conference, the parties shall be prepared to discuss which issues remain for hearing.

Student's complaint was found insufficient pursuant to a separate order dated June 6, 2016. Therefore, Fairfield-Suisun's Motion to Consolidate is now moot. Fairfield-Suisun may renew its motion if Student files an amended complaint.[2] Consolidation is denied. This matter will proceed as previously calendared.

OAH hereby discloses the receipt of an ex parte communication from Student in the form of a two-page letter dated May 31, 2016. In this letter Student indicates his opposition to Fairfield-Suisun's motions to amend and to consolidate. Student also shares his support for his current educational placement; his belief that he has been denied a free appropriate

[2] This motion to consolidate appears to be based on a faulty assumption that Student had amended his complaint to include Fairfield-Suisun. Student's case named Solano County only, so the parties for the two actions are not the same.

public education; and his desire for a functional behavior assessment by the Northern California School for the Deaf and Hard of Hearing.

The ALJ is making Student's ex parte communication part of the record in this matter by attaching a copy to this Notice of Ex Parte Communication.

Student is advised that any document filed with OAH in this matter must be served on Fairfield-Suisun at the time of filing. Each party is required to include a proof of service with each filed document.

IT IS SO ORDERED.

DATE: June 6, 2016

DocuSigned by:
Theresa Ravandi
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THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings