BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENTS ON BEHALF OF STUDENT, v. WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2013031004
WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT, v. PARENTS ON BEHALF OF STUDENT.	OAH CASE NO. 2013040364, also consolidated with OAH CASE NO. 2013060755 ORDER GRANTING STUDENT'S REQUEST TO DISMISS; DENYING DISTRICT'S MOTIONS TO DISMISS: AND DENYING STUDENT'S MOTION TO AMEND FIRST AMENDED DUE PROCESS COMPLAINT

On March 26, 2013, Student and Parents (collectively, Student) filed a Request for Due Process Hearing (Student's Complaint), naming West Contra Costa Unified School District (District) as the respondent. Subsequently, District filed two Requests for Due Process Hearing (District Complaints) against Student. All three complaints were consolidated herein.

On June 24, 2013, OAH granted Students Motion to Amend Student's Complaint, and Student's First Amended Complaint was deemed filed. New prehearing and hearing dates were set, pursuant to title 20 United States Code section 1415 (c)(2)(E)(ii), which requires all timelines to be reset when a motion to amend is granted.

On August 12, 2013, OAH conducted a prehearing conference (PHC), during which this consolidated matter was continued and dates were set for a 10-day hearing.

On August 12, 2013, District filed a Motion to Dismiss (First Motion to Dismiss) directed at issues 2, 3, and 4 of Student's PHC Statement. These issues, which involved alleged denials of FAPE by reason of the lack of social cognition intervention, the District's

failure to properly draft and implement the settlement agreement, and the District's failure to follow the recommendations of an independent assessor, correspond to issues 1, 2, and 3, of Student's First Amended Complaint.[1] In its First Motion to Dismiss, District contends that OAH has no jurisdiction over these issues, or, in the alternative, that these issues are barred in part by the statute of limitations.

On August 15, 2013, Student filed a single document which included a Response to District's First Motion to Dismiss (Student's Response), a Request to Dismiss without Prejudice (Student's Request to Dismiss) and a Motion to Amend Student's First Amended Complaint (Student's Motion to Amend.) This document did not include a proposed Second Amended Complaint to accompany Student's Motion to Amend.

Student's Response was congruent with Student's Request to Dismiss, in that they both requested that OAH dismiss without prejudice the issues that were the subject of District's First Motion to Dismiss, *i.e.,* issues 1, 2, and 3, of Student's First Amended Complaint. In his Motion to Amend, Student sought to add four issues to Student's First Amended Complaint.

On August 19, 2013, District filed a single document which consisted of a Notice of Non-Opposition to Student's Request to Dismiss, a Notice of Non-Opposition to Student's Motion to Amend, and yet another Motion to Dismiss (Second Motion to Dismiss). The District's Second Motion to Dismiss was directed at one of the issues that was the subject of Student's Motion to Amend, which motion had not even been ruled upon as of the date District filed its Second Motion to Dismiss.

On August 20, 2013, Student filed a Reply to District's Non-Opposition to Student's Motion to Dismiss Without Prejudice, which only reiterated that Student wished OAH to dismiss Student's issues, referenced above, without prejudice, as Student had already requested.

STUDENT'S REQUEST TO DISMISS

Parties generally may voluntarily dismiss issues prior to hearing. Student's Request to Dismiss without prejudice issues numbers 1, 2, and 3 of Student's First Amended Complaint is granted. The matter will proceed with respect to the remaining issues.

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[1]Under the circumstances of this case, District's Motion to Dismiss should have been directed to the issues as stated in Student's First Amended Complaint, not to the issues in Student's PHC Statement. Since the First Amended Complaint, and not the PHC Statement, is a governing pleading in this case, for clarity's sake this Order will refer to the issues as they are numbered in the Student's First Amended Complaint.

DISTRICT'S FIRST MOTION TO DISMISS

Student's Request to Dismiss issues 1, 2, and 3 of his First Amended Complaint has been granted. Therefore, District's First Motion to Dismiss, which was directed only at those issues is denied, as it is moot.

STUDENT'S MOTION TO AMEND FIRST AMENDED COMPLAINT

A party may amend the due process complaint if the other party consents in writing to such amendment and is given the opportunity to resolve the complaint through a resolution meeting, or if the hearing officer grants permission at any time no later than five days before a due process hearing occurs. (20 U.S.C. § 1415(c)(2)(E)(i).) District has filed a non-opposition to Student's Motion to Amend, but the non-opposition included a Motion to Dismiss one of the issues presented by the Motion to Amend, as well as the qualification that the currently scheduled PHC and hearing dates remain the same. Therefore, Student's non-opposition to Student's Motion to Amend does not constitute written consent to Student's Motion to Amend, as contemplated by the statute. Instead, Student's Motion to Amend requires OAH to rule as to whether it should be granted or denied.

Student's Motion to Amend is denied. Student's action against the District has been pending since March 26, 2013. On June 24, 2013, Student was granted leave to file his First Amended Complaint. Consequently, pursuant to title 20 United States Code section 1415(c)(2)(E)(ii), the PHC and hearing date that had been scheduled at that time were vacated, and new PHC and hearing dates were set. The PHC was held on August 12, 2013, at which time the matter was continued yet again and new PHC and hearing dates were set.

At the PHC, Student gave no indication that Student wished to amend his complaint for a second time. Furthermore, the issues that are the subject of the Motion to Amend concern matters of which Student has been aware, or should have been aware of, for months, including at the time Student filed his First Amended Complaint. This matter has been pending long enough, and should go forward as scheduled. However, the matter will be further delayed if the Motion to Amend is granted, as the statute requires that timelines be reset. Under these circumstances, Student's Motion to Amend is denied.

Education Code section 56509 allows Student to file a separate Request for Due Process Hearing to allege additional issues, such as those that are the subject of his Motion to Amend, and nothing in this Order is intended to prohibit Student from filing such a separate Request for Due Process Hearing.

DISTRICT'S SECOND MOTION TO DISMISS

Based upon the foregoing, District's Second Motion to Dismiss is both premature and moot, and is denied. The denial of District's Second Motion to Dismiss is not intended to

prevent District from filing a similar motion regarding any other Request for Due Process Hearing that Student may file.

IT IS SO ORDERED.

Dated: August 22, 2013

/s/

ELSA H. JONES
Administrative Law Judge
Office of Administrative Hearings