BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. FOLSOM CORDOVA UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2013040098
FOLSOM CORDOVA UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2013090197 ORDER GRANTING MOTION TO AMEND COMPLAINT AND MOTION TO CONSOLIDATE, AND DENYING MOTION TO DISMISS AS MOOT

Motion to Amend

On April 3, 2013, Parent on behalf of Student (Student) filed with the Office of Administrative Hearings (OAH) a Due Process Hearing Request in OAH case number 2013040098 (First Case), naming the Folsom Cordova Unified School District (District). This matter is currently scheduled for hearing beginning on October 2, 2013. On September 16, 2013, Student filed a Motion to Amend along with an amended complaint. On September 17, 2013, Anne M. Sherlock, Attorney at Law, filed a prehearing conference (PHC) statement in which the District responds to Student's motion to amend. Although the District's response does not specify whether the District agrees to or opposes the motion to amend, the District does acknowledge there are significant proposed amendments and a number of additional allegations such that if OAH grants the motion, the District will not waive the restarting of the applicable hearing timelines.

APPLICABLE LAW

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).)[1] The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. §1415(c)(2)(E)(ii).)

DISCUSSION

Student seeks to amend her complaint to include a new issue which has arisen since the initial filing, namely, an alleged denial of a free appropriate public education (FAPE) for the 2013-2014 school year, as well as to add additional claims for the 2010-2011, 2011-2012 and 2012-2013 school years. Student is now additionally alleging the applicability of an exception to the statute of limitations.

Student's 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.

Motion to Consolidate

On September 6, 2013, the District filed a Request for Due Process Hearing in OAH case number 2013090197 (Second Case), naming Student. Pursuant to the September 9, 2013 Scheduling Order, this matter is set for hearing on October 8, 2013, with a PHC on September 30, 2013.

On September 6, 2013, the District filed a Motion to Consolidate the Second Case with the First Case. Student was allowed an extended time to respond to this motion. On September 16, 2013, Student filed a response in which she agrees with the motion to consolidate, so long as all dates set in the Second Case are vacated and the matters proceed on the dates governed by the First Case.

APPLICABLE LAW

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].)

[1] All statutory citations are to title 20 United States Code unless otherwise indicated.

DISCUSSION

Here, the First Case and Second Case involve common questions of fact and overlapping legal issues. Student identifies four issues in her amended complaint with numerous sub-issues involving whether the District denied Student a FAPE during the 2010-2011, 2011-2012, 2012-2013 and 2013-2014 school years. The District identifies one issue in its complaint, namely whether Student no longer qualifies for special education and related services under the Individuals with Disabilities Education Act (IDEA), as determined in the August 23, 2013 individualized education program (IEP) team meeting.

Given the overlapping issues regarding Student's progress on goals or lack thereof, the provision or non-provision of services, and whether Student currently qualifies for special education, consolidation is warranted and will prevent the risk of inconsistent rulings.

In addition, consolidation furthers the interests of judicial economy because both cases involve the same parties and many of the same witnesses would be required to testify in each proceeding. Each matter will also involve the introduction of the same or similar documents, including relevant IEP's. Accordingly, consolidation is granted.

When consolidating cases, OAH designates the statutory timelines applicable to the consolidated matters to be controlled by one of the cases. Here, the statutory timelines shall be controlled by the First Case, and the consolidated matters will now proceed on the dates identified in the new scheduling order which will be issued forthwith pursuant to the granting of Student's amended complaint.

Motion to Dismiss Issues

On September 6, 2013, the District filed a Motion to Dismiss Issues in Student's original complaint. Student filed a response opposing the motion on September 16, 2013, as well as a request that OAH order the District to provide OAH a copy of a confidential settlement proposal to further support Student's opposition. The District replied on September 17, 2013, and Student further replied on September 19, 2013.

Because Student's motion to amend is granted, the District's motion to dismiss issues in Student's original complaint is moot. Similarly, any requests of Student related to District's motion to dismiss are moot. Nothing in this order prevents the District from re-filing a motion to dismiss issues in Student's amended complaint.

ORDER

1. Student's Motion to Amend 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.

2. The District's Motion to Consolidate is granted. All dates previously set in OAH Case Number 2013090197 (Second Case) are vacated. OAH will issue a scheduling order with the new dates for the consolidated matters. The 45-day timeline for issuance of the decision in the consolidated cases shall be based on the date of the filing of the complaint in OAH Case Number 2013040098, the First Case.

3. The District's Motion to Dismiss Issues is denied as moot.

Dated: September 20, 2013

/s/
THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings