BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH CASE NO. 2013060983
v.	ORDER GRANTING STUDENT'S IMPLIED MOTION TO AMEND COMPLAINT AND DISMISSAL OF REQUEST TO RECUSE DISTRICT COUNSEL.
GRAVENSTEIN UNION SCHOOL DISTRICT.	

This matter has presented a tumultuous history to date, commencing with the filing of Student's initial complaint on June 24, 2013. At that time, Myra Galt, Student's authorized representative and Advocate filed a Due Process Hearing Request (complaint), naming Gravenstein Union School District (District). On June 27, 2013, OAH deemed Student's complaint insufficient, and indicated in its Order that Student and/or his Advocate might wish to utilize OAH mediator assistance in drafting a second complaint. On July 8, 2013, Student filed an amended complaint which OAH again deemed insufficient on July 16, 2013. Again, OAH provided Student's Advocate with the information to obtain mediator assistance to prepare another amended complaint.

On July 22, 2013, Student's Advocate sent a document entitled "Re: ALJ Darrell Lepkowsky decision of Order Determining Amended Complaint to Be Insufficiently Pled in Its Entirety and Amended Complaint." As indicated in her July 26, 2013 Order Denying Reconsideration, ALJ Lepkowsky indicated that the relief requested in Student's July 22, 2013 filing was ambiguous, to the extent it was unclear if Student intended the document as a reconsideration or a third amended complaint. Insofar as ALJ Lepkowsky answered the reconsideration issue, the remainder of the correspondence reflects a third amended complaint. This, however, is complicated by a subsequent filing from Student's Advocate on July 25, 2013, entitled "Amended Request for Complaint Investigation," and which provides an additional and distinct claim involving "child find." Additionally, on August 1, 2013, the District filed a Response to a Motion to Recuse District Counsel, purportedly contained in Student's July 22, 2013 filing, which will be addressed separately herein.

1. Implied Amended Complaint:

Student's Advocate has filed two documents with OAH, each of which can be construed as an amended complaint. As Ms. Galt has indicated in her correspondence with OAH, she is clearly not an attorney. As such, this ALJ will extend the pro se courtesy of additional leeway in the interpretation of the July 22, and July 25, 2013 documents, and determine that the July 22, 2012 filing constitutes an amended complaint, and the July 25,

2013 document constitutes a further amended complaint adding the additional issue of "child find," described on page two, with the remedies requested on page three and four.

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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).)

Student's amended complaint is timely and therefore, Student has filed an amended complaint as contained in the July 22, 2013 filing, to which this ALJ is amending to include the issue and factual allegations contained in Student's July 25, 2013 filing. It should be clearly noted that this ALJ is making no determination of sufficiency of Student's amended complaint.

2. Student' Request to Recuse District' Counsel:

Student's July 22, 2013 filing with OAH contained correspondence from Ms. Galt, which, in addition to the foregoing request for reconsideration, contained a series of complaints and frustrations in dealing with the District and OAH. While this venting is clearly separate from that portion of the document intended to be Student's amended complaint, the District sees fit to take issue with Ms. Galt's contention that counsel is "actually more aware of the issues in this school district than he is admitting to OAH,"and "Maybe he should be considered as a 'party' and so his firm be recused from participating from this hearing." (sic).

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education" (FAPE), 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 has a limited jurisdiction and can only address issues related to the identification, evaluation, or educational placement of a child, or the provision of a free

appropriate public education to such child. As such, OAH does not have jurisdiction to disqualify a party's chosen legal representation.

Ms. Galt's statement is clearly not part of the amended complaint, and she is certainly entitled to her opinions. As such, the District's Response in opposition to counsel's recusal is viewed as unnecessary rhetoric in an already volatile matter. However, in an abundance of caution, this ALJ will state for the record that Student has presented no information which would substantiate a claim of conflict of interest, or reason for recusal of counsel. Ms. Galt is reminded that as Mr. Corbin is legal counsel to the District, just as she is the legal representative of Student. It stands to reason that Mr. Corbin has significantly more information regarding this matter and the District than he has presented to OAH. Therefore, Student's request that Mr. Corbin, the District's counsel, and his law firm, be recused from this matter is denied

ORDER

1. Student's motion to amend is timely and is granted. The amended complaint consists of the July 22, 2013 amended complaint and the "child find" issue contained in Student's July 25, 2013 filing. 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.

IT IS SO ORDERED.

Dated: August 08, 2013

/s/
JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings