

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

BONITA UNIFIED SCHOOL DISTRICT,

v.

PARENTS on behalf of STUDENT.

OAH CASE NO. 2009060987

ORDER GRANTING MOTION TO  
AMEND COMPLAINT

On June 22, 2009, Bonita Unified School District filed a Request for Due Process Hearing (complaint), naming Parents on behalf of Student as respondent.

On June 23, 2009, the Office of Administrative Hearings (OAH) issued a Scheduling Order, setting the following dates: July 9, 2009 for mediation; 1:30 p.m., July 10, 2009, for prehearing conference; and July 17 and 20, 2009, for due process hearing.

On July 6, 2009, District filed a Notice of Representation, stating that Nancy Finch-Heurman of Parker & Covert, LLP, would be representing the interests of the District in this matter.

On July 6, 2009, Ms. Finch-Heurman, on behalf of District, cancelled the July 9 mediation, stating District's intent to file a motion to amend the complaint. Later the same day, District filed a Motion to Amend District's Request for Due Process, along with the proposed amended pleading.

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)(II).)<sup>1</sup> The filing of an amended complaint restarts the applicable timelines for the due process hearing. (§1415(f)(1)(B).)

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<sup>1</sup> All statutory citations are to Title 20 United States Code unless otherwise indicated.

## DISCUSSION

The District's original complaint concerns an IEP which indicated that the Student was no longer eligible for special education services, with which the Parents disagreed. The complaint also stated that the District thereafter denied, in writing, the Parents' subsequent request that District pay for independent assessments.

The original complaint only listed one issue, requesting that the District's evaluations be found appropriate (34 CFR 300.502(b)(2)). Implied in the original complaint is the District's position that the IEP team was accurate in determining Student was no longer eligible for special education services. However, the original complaint failed to clearly state the issue.

The proposed amended complaint rectifies this ambiguity. The amended complaint specifically includes the accuracy of the District's determination of ineligibility as Issue #2, with a corresponding proposed resolution. The pleading is otherwise unchanged.

Amendment of the complaint is appropriate and timely.

## ORDER

1. The motion to amend the due process complaint is granted.
2. The amended complaint is deemed filed on the date of this order.
3. Pursuant to Section 1415, subsection (c)(2)(E), all applicable timelines shall recommence as of the date of this order.
4. All dates are vacated. A new scheduling order shall issue.

Dated: July 07, 2009

/s/

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CLIFFORD H WOOSLEY  
Administrative Law Judge  
Office of Administrative Hearings