

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

IRVINE UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2010090067

ORDER GRANTING MOTION TO  
AMEND COMPLAINT

On August 30, 2010, Irvine Unified School District (District) filed a Due Process Hearing Request (complaint), naming Student as the respondent. The sole issue raised by the complaint was whether an IEP developed in the Spring of 2010 offered Student a FAPE. On September 22, 2010, the hearing was continued at the joint request of the parties to November 30, 2010 through December 2, 2010, with a prehearing conference on November 22, 2010.

On October 26, 2010, District filed a motion to amend the complaint (motion) to add an issue about whether the District's subsequent offer to provide Student with a back-up nurse to meet his health needs, which is conditioned on the nurse being able to obtain information from Student's physicians, provided a FAPE. District contends that amendment is proper because the issue arose after the complaint was filed and resolution of the new issue in the same hearing as the first issue would serve the interest of judicial economy because the same witnesses and evidence would be used. District demonstrated that it attempted to obtain Student's agreement to amendment prior to filing the motion. On October 27, 2010, Student filed an opposition to the motion on the grounds that the new issue was not "ripe" because District's counsel should have done more to resolve the dispute with Student's counsel prior to filing, that the issue lacked merit, and the issue was merely an attempt by District to obtain discovery. As discussed below, amendment is appropriate in this case.

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.

Here, Student's objections to amendment focus on the merits of District's new claim and how Student's attorney believes District's attorney should communicate with her. Student's objections to amendment do not address that the request to amend is timely and would promote judicial economy by being heard in conjunction with the issue of whether District has offered Student a FAPE. Under these facts, the motion to amend should be granted.

#### ORDER

1. District's Motion to Amend is granted.
2. The District's First Amended Request for Due Process Hearing is deemed filed as of the date of this order.
3. All applicable timelines for the due process hearing are vacated and a new scheduling order shall be issued.

Dated: October 28, 2010

/s/

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RICHARD T. BREEN  
Administrative Law Judge  
Office of Administrative Hearings