

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TUSTIN UNIFIED SCHOOL DISTRICT  
AND ORANGE COUNTY MENTAL  
HEALTH.

OAH CASE NO. 2011020391

ORDER GRANTING STUDENT'S  
MOTION TO AMEND COMPLAINT

On February 8, 2011, Student filed a Due Process Hearing Request (complaint), naming Tustin Unified School District (District) and Orange County Mental Health (OCMH) as respondents. On March 18, 2011, Student filed an amended complaint (amended complaint), which OAH has interpreted as a Request to Amend the Due Process Hearing Request. On March 28, 2011, District filed a statement advising that it did not oppose Student's filing of an amended complaint, despite the absence of a concurrent filing of a request to amend the underlying complaint, with exception of the fifth issue of Student's amended complaint. The fifth issue alleges that District denied Student a FAPE when it held a manifestation IEP and an expulsion hearing in the absence of Student, Student's parents, and Student's advocate, and failed to develop alternative interventions to suspension. District contends that the portion of Issue Five that addresses the procedural appropriateness of the expulsion hearing is outside OAH's jurisdiction, and should therefore, be stricken.

OCMH filed no opposition.

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

The 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

---

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

this order. If District wishes to challenge any portion of Student's amended complaint, District may file a Notice of Insufficiency, a Motion to Dismiss for lack of jurisdiction, or may otherwise assert its defenses at hearing. OAH will issue a scheduling order with the new dates.

IT IS SO ORDERED.

Dated: March 29, 2011

/s/

---

CARLA L. GARRETT  
Administrative Law Judge  
Office of Administrative Hearings