

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. 2011020542

ORDER GRANTING MOTION TO
AMEND COMPLAINT AND REQUEST
FOR CONTINUANCE

On March 8, 2011, District filed a motion to amend the due process hearing request that is currently scheduled for hearing. District seeks to add claims relating to parent's request for an IEE based on disagreement with the assessments that are part of the FAPE issue in District's original due process hearing request. District asks that the existing continued hearing dates be used for the amended complaint. OAH interprets District's request to use the existing hearing dates as a request for a continuance of the amended due process hearing request dates because granting leave to amend result is a mandatory resetting of all timelines. No opposition was received from Student. As discussed below, the request to amend is granted with District's amended complaint being deemed filed as of the date of this Order. District's request for a continuance of the new hearing dates will also be granted as of the date of this order.

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).)

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted for good cause. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) In ruling upon a motion for continuance, OAH is guided by the provisions found within the Administrative Procedure Act and the California Rules of Court that concern motions to continue. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, rule 3.1332 .) Generally, continuances of matters are disfavored. (Cal. Rules of Court, rule 3.1332(c).)

¹ All statutory citations are to Title 20 United States Code unless otherwise indicated.

The motion to amend is timely and is granted because the amendment will result in a more efficient hearing of related issues. The amended complaint shall be deemed filed on the date of this order.

District's request for a continuance of the reset hearing dates to the dates established for hearing on District's original request for a due process hearing is also granted.

ORDER

1. District's Motion to Amend is Granted. All applicable timelines shall be reset as of the date of this order.

2. District's Motion for a Continuance of the amended hearing dates is also granted. The dates for the amended complaint shall be: Mediation on May 19, 2011 at 9:30 a.m., Prehearing Conference on June 1, 2011 at 1:30 p.m., and Due Process Hearing on June 7-9, 2011 at 930 a.m.

IT IS SO ORDERED.

Dated: March 14, 2011

/s/

RICHARD T. BREEN
Presiding Administrative Law Judge (acting)
Office of Administrative Hearings