

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ASPIRE PUBLIC SCHOOLS.

OAH CASE NO. 2011070606

ORDER GRANTING MOTION TO  
AMEND COMPLAINT, DENYING  
MOTION TO DISMISS AND  
GRANTING CONTINUANCE

On July 15, 2011, Christopher H. Knauf, attorney for Student, filed a Due Process Hearing Request (complaint), naming Aspire Public Schools (District). On September 21, 2011, Student filed a request to amend the complaint and an amended complaint. The parties also filed a stipulation whereby District withdrew its pending motion to dismiss Student's complaint, and the parties waived the resolution session and request that following dates from the initial complaint be maintained:

Mediation:	September 28, 2011
Prehearing Conference:	October 24, 2011
Due Process Hearing:	November 1, 2 and 3, 2011

**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).) The filing of an amended complaint restarts the applicable timelines for the due process hearing. (§1415(c)(2)(E)(ii).)

A local educational agency is required to convene a resolution meeting with the parents and the relevant members of the individual education program team within 15 days of receiving notice of the Student's complaint. (§ 1415(f)(1)(B)(i)(1); 34 C.F.R. § 300.510(a)(1) (2006).) The resolution session need not be held if it is waived by both parties in writing. (§ 1415(f)(1)(B)(i)(IV); 34 C.F.R. § 300.510(a)(3) (2006).)

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, the Office of Administrative Hearings (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, 3.1332 .) Generally, continuances of matters are disfavored. (Cal. Rules of Court, 3.1332(c).)

### **DISCUSSION**

The request to amend Student's complaint is filed timely, agreed to by District, and shall be granted. While District has stipulated to withdrawing its motion to dismiss, because Student has now filed an amended complaint, the motion to dismiss is moot and denied.

Parties to a due process hearing have the right to waive the resolution session if all parties agree. Here, the parties have waived the resolution session, which would advance the 45-day time line for OAH to conduct a hearing and issue a written decision. In such a situation, OAH would normally set the due process hearing within three weeks of the date of the amended complaint being filed. However, the parties have requested dates that are outside of this guideline and fall near the end of the 45-day time line. Accordingly, their request to "maintain" the dates set out above is treated as a motion to continue. Because this is the first request to continue based on the amended complaint and the requested dates are reasonable, the request to continue is granted.

### **ORDER**

1. Student's motion to amend is granted. The amended complaint is deemed filed on the date of this order.
2. District's September 19, 2011 Motion to Dismiss is denied.
3. The request for continuance is granted and this matter is set as follows:

Mediation:	September 28, 2011
Prehearing Conference:	October 24, 2011
Due Process Hearing:	November 1, 2 and 3, 2011

Dated: September 26, 2011

/s/  
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MICHAEL G. BARTH  
Administrative Law Judge  
Office of Administrative Hearings