

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

BELLFLOWER UNIFIED SCHOOL
DISTRICT ,

v.

PARENTS ON BEHALF OF STUDENT,

OAH CASE NO. 2012060009

PARENTS ON BEHALF OF STUDENT ,

v.

BELLFLOWER UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012060628

ORDER GRANTING MOTION TO
AMEND COMPLAINT

On May 24, 2012, the Bellflower Unified School District (District) filed a Request for Due Process Hearing in Office of Administrative Hearings (OAH) case number 2012060009 (District's Case) naming Student. On June 13, 2012 Student filed a Request for Due Process Hearing in OAH case number 2012060628 (Student's Case) naming District. On June 18, 2012, OAH consolidated the two cases pursuant to Student's Motion for Consolidation. Student's Case was designated as the Primary Case.

On December 4, 2012, District filed a motion to amend the complaint (motion to amend), together with the first amended request for due process hearing (first amended complaint). On December 7, 2012, Student filed a notice of non-opposition to District's request to amend the complaint.

APPLICABLE LAW AND DISCUSSION

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).)

The motion to amend is timely as Districts' motion is made more than five days before the hearing is due to commence. The due process hearing in the consolidated matters is currently set to begin on January 14, 2013. Further, pursuant to Student notice of non-opposition filed on December 7, 2012, Student does not oppose the request to amend. Therefore, District's motion to amend is timely, and is accordingly granted.

The filing of an amended complaint ordinarily restarts the applicable timelines for the due process hearing. Here, District requests that OAH maintain the currently set hearing dates in January 2013. Because OAH's standard scheduling guideline would place the due process hearing, following District's amendment of its complaint, sooner than January 14, 2013, District's request is considered a motion to continue. District contends that the dates be maintained as the parties previously agreed to those dates. However, Student opposes the request and asserts that the applicable time lines be restarted. The motion is denied without prejudice. OAH shall issue a new scheduling guide for the consolidated matters based upon the filing of District's amended complaint.

ORDER

1. District's motion to amend the complaint is granted.
2. The amended complaint shall be deemed filed on the date of this order.
3. All currently set dates are vacated.
4. For purposes of calculating the 45-day time line for issuance of a decision, District's case, OAH case number 2012060009, shall be the primary case.
5. OAH shall issue a new scheduling order based upon the filing of the amended complaint in District's case, case number 2012060009.

IT IS SO ORDERED.

Dated: December 10, 2012

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings

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