

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

NEWARK UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2012080065

ORDER GRANTING MOTION TO
AMEND COMPLAINT

On August 2, 2012, Student filed a Request for Due Process Hearing (complaint), with the Office of Administrative Hearings (OAH) naming the Newark Unified School District (District). On October 8, 2012, District filed a Stipulation for Petition to File First Amended Complaint, deemed to be the parties' joint motion to amend Student's complaint based on the stipulation of the parties. On October 9, 2012, Student provided an Amended Request for Due Process Hearing (amended complaint) to OAH.

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 due process hearing is set for October 16 through 18, 2012, and the motion was timely made more than five days before the hearing. District's execution of the stipulation constitutes its written consent to Student's proposed amended complaint. In addition, by the stipulation, District expressly does not waive the statutory requirement to restart timelines, which encompasses various rights and responsibilities of the parties, including a new resolution session period. Therefore, OAH need not exercise discretion to evaluate the proposed amendments because District has not only consented but is given the opportunity to resolve the complaint through a new resolution session. Based on the foregoing, the motion to amend Student's complaint is granted

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

ORDER

1. Student's amended complaint shall be deemed filed on the date of this order.
2. All applicable timelines shall be reset as of the date of this order. OAH will issue a scheduling order with new mediation and due process dates.

Dated: October 11, 2012

/s/

DEIDRE L. JOHNSON
Administrative Law Judge
Office of Administrative Hearings