

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PITTSBURG UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012110571

ORDER GRANTING MOTION TO
AMEND REQUEST FOR DUE
PROCESS

On November 16, 2012, Student filed a request for a due process hearing (complaint) naming the Pittsburg Unified School District (District). This matter is now set for a prehearing conference on February 13, 2013, and a hearing beginning February 25, 2013. On February 1, 2013, Student filed an amended complaint, deemed to be a motion to amend the complaint. On February 8, 2013, District filed a response indicating it does not oppose the motion.

APPLICABLE LAW AND ANALYSIS

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 statutory timelines for the due process hearing unless the parties waive application of that requirement. (20 U.S.C. §1415(c)(2)(E)(ii).)

The granting of a motion to amend is discretionary. Counsel for Student did not file a motion to amend which would have provided notice to District and OAH of the nature of the proposed changes to Student's complaint, and is admonished to do so in future cases. The motion should generally identify what factual allegations, issues, and/or proposed resolutions were eliminated, modified, or added, for example, to facilitate the administrative law judge's evaluation of the motion.

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

Here, without searching and comparing the original complaint (12 pages) and the proposed amended complaint (17 pages), the amendments are unknown and the undersigned declines to search the pleadings. The motion has been made, and this order is issued more than five days before the hearing. Therefore, the motion to amend is timely and unopposed. The parties have not stipulated to waive the statutory restart requirement, which encompasses various rights and responsibilities of the parties, including a new resolution session period. Based on the foregoing, Student's motion to amend her complaint is granted.

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 scheduling dates.

Dated: February 11, 2013

/s/

DEIDRE L. JOHNSON
Administrative Law Judge
Office of Administrative Hearings