

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

BERKELEY UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2014040781

ORDER GRANTING MOTION TO
AMEND COMPLAINT

On May 30, 2014, a telephonic prehearing conference (PHC) was convened by Administrative Law Judge (ALJ) Adeniyi A. Ayoade, Office of Administrative Hearings (OAH). Nicole Hodge Amey, Attorney at Law, appeared on behalf of Student. Jan E. Tomski, Attorney at Law, appeared on behalf of the Berkeley Unified School District (Berkeley). Due to Student's pending request to amend his request for due process hearing, the PHC was not held but the discussion with the parties was recorded.

Motion to Amend the Complaint

On April 15, 2014, Parents on behalf of Student (Student) filed with the Office of Administrative Hearings a Request for Due Process Hearing (complaint) against the Berkeley Unified School District (Berkeley). On May 28, 2014, Student, through his attorney, filed an amended Request for Due Process Hearing (amended complaint) with OAH.¹ Berkeley has no opposition to the motion to amend (motion).²

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

¹ OAH deems the filing of an amended complaint a motion to amend the complaint.

² OAH obtained Berkeley's response to the motion during on the convened prehearing conference. While Berkeley initially opposed the motion, Berkeley withdrew its opposition after both parties agreed that the due process hearing in this matter should be set for September 2014. Based on their agreement, the parties would be filing a joint stipulation, to OAH, to request specific due process hearing dates in September 2014.

permission at any time more than five (5) days prior to the due process hearing. (20 U.S.C. § 1415(c)(2)(E)(i); Ed. Code, § 56502, subd. (e).) The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. § 1415(c)(2)(E)(ii); Ed. Code, § 56502, subd. (e).) In a student-filed case, these timelines include a new resolution session period. (Ed. Code, § 56501.5.)

Student's motion to amend the complaint is granted. The due process hearing in this matter is currently scheduled to begin on June 10, 2014. As such, Student's motion to amend the complaint is timely as the due process hearing date is not set to begin within five days from the date of this ruling on the motion. Also, District has not opposed the motion to amend.

ORDER

1. Student's motion to amend the complaint is granted, and all applicable timelines are reset as of the date of this order.
2. All currently set dates in this matter are vacated.
3. The amended complaint shall be deemed filed on the date of this order, and the 45-day timeline for issuance of the decision in this matter shall be based on the date of this order.
4. OAH will issue a scheduling order with the new dates based on the timelines now reset pursuant to this order.

IT IS SO ORDERED.

DATE: May 30, 2014

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings