

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

MESA UNION ELEMENTARY SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2016010070

ORDER GRANTING DISTRICT'S
MOTION TO AMEND COMPLAINT
AND DENYING STUDENT'S MOTION
TO DISMISS OR CONTINUE

On January 4, 2016, Mesa Union Elementary School District filed a due process hearing request (complaint) with the Office of Administrative Hearings, naming Parent on behalf of Student. On February 10, 2016, District filed a motion to amend its complaint to include disputes with Parent that have arisen since the original filing, and attached a copy of the proposed amended complaint (amended complaint). On February 15, 2016, Student filed an opposition to District's motion and a request that District's new issues be dismissed or the matter continued.

District's Motion to Amend Complaint

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. (20 U.S.C. §1415(c)(2)(E)(ii).)

The motion to amend is timely and is granted. The amended complaint shall be deemed filed on the date of this order. All applicable timelines shall be reset as of the date of this order. OAH will issue a scheduling order with the new dates.

Student's Motion to Dismiss or Continue

Student's opposition states that Parent has filed a complaint with the California Department of Education on District's new issues, and requests that those issues be dismissed from the amended complaint and that this matter be continued until such time as CDE has completed its investigation issued its findings. Student contends that because there is a pending CDE complaint, there are no disputes between the parties to be adjudicated. Alternatively, Student requests a continuance of the hearing until the completion of the investigation, so that Student can present the CDE's findings as evidence at hearing.

Regardless of the pending CDE complaint, District has the right “to present a complaint regarding matters involving proposal or refusal to initiate or change the ... educational placement of a child.” (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) District’s amended complaint seeks a determination that the programs offered to Student constituted a free appropriate public education, that the services called for in Student’s individualized education programs were provided to Student, and whether District properly and timely responded to Parent’s program requests, including Parent’s requests for educational records. District’s amended complaint presents the precisely the types of claims that the IDEA envisions being adjudicated by OAH

The existence of a compliance complaint filed with CDE does not constitute a basis for dismissal of a due process hearing complaint on the same issue. The IDEA contemplates that an impartial hearing officer may determine whether a District violates its obligation to provide a free appropriate public education to a student based upon the evidence presented at hearing. (See 20 U.S.C. § 1415(f); Ed. Code § 56505, subds. (c) and (f).) The administrative law judge conducting this hearing must decide if a denial of a FAPE occurred based on evidence presented by Student and District, and need not rely for his or her decision on the as yet uncompleted findings of CDE. Therefore, there is no need to continue the hearing for CDE to complete its investigation.

Accordingly, Student’s motion to dismiss or continue this hearing is denied.

IT IS SO ORDERED.

DATE: February 18, 2016

DocuSigned by:

A7D463FF094544B...
ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings