

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENTS ON BEHALF OF STUDENT,

OAH Case No. 2016010404

v.

SAN DIEGO UNIFIED SCHOOL DISTRICT,

SAN DIEGO UNIFIED SCHOOL DISTRICT,

OAH Case No. 2016020351

v.

PARENTS ON BEHALF OF STUDENT.

ORDER GRANTING STUDENT'S
MOTION TO AMEND COMPLAINT
AND DENYING SAN DIEGO'S
MOTION TO ADVANCE HEARING
DATES

PROCEDURAL HISTORY

On January 14, 2016, Student filed a Due Process Hearing Request (complaint) with the Office of Administrative Hearings, naming the San Diego Unified School District. San Diego filed a complaint against Student on February 4, 2016. In an order dated February 9, 2016, OAH granted San Diego's unopposed motion to consolidate the two cases. OAH granted the parties' joint request for continuance in an order dated February 25, 2016. The hearing in this consolidated matter is presently set to begin on April 25, 2016.

On April 11, 2016, Student filed a motion to amend her complaint. Student seeks to amend her complaint to include an allegation that San Diego's most recent offer of an individualized education program denied Student a free appropriate public education. Student's initial complaint contains a similar allegation regarding an earlier IEP offer made to her by San Diego.

San Diego filed a response to Student's motion to amend on April 13, 2016. San Diego stated that it did not oppose Student's motion as long as the dates presently set for hearing in this consolidated matter remain as presently scheduled. San Diego, in effect, seeks to advance the hearing dates if Student's motion to amend is granted. On April 14, 2016, Student filed a reply to San Diego's response. Student contends that there is no statutory basis for advancing hearing dates once a motion to amend has been granted.

Student urges that statutory guidelines be followed and that hearing on the consolidated matter, including her amended complaint, be set pursuant to statutory guidelines.

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).) The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. §1415(c)(2)(E)(ii).)

Student's motion to amend is timely and is granted. The amended complaint is deemed filed as of the date of this order.¹

In its response, San Diego requested that the present hearing dates be retained if OAH grants Student's motion to amend. When OAH grants a party's motion to amend, all timelines are reset. San Diego is, in effect, requesting that the hearing dates in this case be advanced.

A local educational agency is required to convene a resolution meeting with the parents and the relevant members of the Individualized Education Program team within 15 days of receiving notice of the Student's complaint or, as in this case, an amended complaint. (20 U.S.C. § 1415(f)(1)(B)(i)(I); 34 C.F.R. § 300.510(a)(1) (2006).)² The resolution session need not be held if it is waived by both parties in writing or the parties agree to use mediation. (34 C.F.R. § 300.510(a)(3).) If the parents do not participate in the resolution session, and it has not been otherwise waived by the parties, a due process hearing shall not take place until a resolution session is held. (34 C.F.R. § 300.510(b)(3).) If the parties agree to waive the resolution session, the 45-day timeline for a due process hearing begins the day after the waiver. (*Id.* at § 300.510(c)(1).)

Here, there is no indication that Student has waived the resolution session on the amended complaint. San Diego has not cited any authority to support advancing the hearing dates where a resolution session has not been waived. San Diego's motion to advance the hearing dates on the amended complaint is therefore denied without prejudice. All applicable timelines shall be reset as of the date of this order.

¹ Student is cautioned that further motions to amend based on disputes involving subsequent IEP offers will be disfavored.

² All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

ORDER

1. Student's motion to amend her complaint is granted.
2. San Diego's motion to advance the hearing dates is denied without prejudice.
3. The presently scheduled prehearing conference and hearing dates are vacated.
4. OAH shall issue a scheduling order that sets mediation, prehearing conference and hearing dates based on a decision timeline that commences as of the date of this order.

DATE: April 15, 2016

DocuSigned by:

Darrell Lepkowsky

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DARRELL LEPKOWSKY

Administrative Law Judge

Office of Administrative Hearings