

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT on behalf of STUDENT, vs. TEMECULA VALLEY UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2009040514
TEMECULA VALLEY UNIFIED SCHOOL DISTRICT, vs. PARENT on behalf of STUDENT.	OAH CASE NO. 2009031335
TEMECULA VALLEY UNIFIED SCHOOL DISTRICT, vs. PARENT on behalf of STUDENT.	OAH CASE NO. 2009050048 ORDER GRANTING MOTION TO AMEND DISTRICT'S COMPLAINT AND SCHEDULING ORDER

On March 27, 2009 District filed a Request for Due Process Hearing naming Parent on behalf of Student as respondent. This matter was designated as OAH Case No. 2009031335[first case].

On April 14, 2009 Student filed a Request for Due Process Hearing (Student's complaint), naming District as the respondent. This matter was designated as OAH Case No. 2009040514[second case].

On April 16, 2009 OAH issued an Order granting Consolidation of the first case and second case, and designating the second case as primary case. The Order provided that all dates in the first case were vacated and that the 45-day timeline for issuance of a decision will be based on the filing date of the second case. Pursuant to the April 14, 2009 Scheduling Order in the second case, a mediation was scheduled for May 19, 2009, a Pre-hearing conference for May 29, 2009 and a Due Process hearing scheduled for June 9, 2009.

On April 30, 2009 District filed a second Request for Due Process hearing (District's Second complaint.) This matter was designated as OAH Case No. 2009050048 [third case].

On May 5, 2009, OAH issued a Scheduling Order setting Mediation on May 19, 2009, a pre-hearing conference on May 29, 2009 and a Due Process hearing on June 8, 2009.

On May 5, 2009, District filed a Motion to Consolidate its most recent filing, OAH Case Numbers 009050048 [third case], with the previously consolidated case governed by OAH Case No. 2009040514. District also requested that when and if consolidated, that the settings and timelines govern as set for in the Scheduling Order dated April 14, 2009, and as affirmed by the order of consolidation dated April 16, 2009.

On May 5, 2009 Student filed a statement of non-opposition to the consolidation and indicated in the statement that his counsel was not available for hearing on June 9, 2009 as scheduled.

On May 21, 2009, OAH granted a joint request to continue this consolidated matter and is presently scheduled for hearing on September 14-18 and 21-23, 2009.

On July 1, 2009, District filed a Motion to Amend the Due Process Hearing Request (amended complaint). District asserts that OAH should grant its motion because an individualized education program (IEP) offer made on June 12, 2009, amends the (IEP) dated March 12, 2009 which is the subject of the consolidated matters in this proceeding. Thus the amended complaint raises the issue of whether the March 12, 2009, IEP, as amended by the June 12, 2009, IEP provides Student a free appropriate public education (FAPE)? District further asserts that granting the motion to amend will not delay hearing of this matter as currently scheduled.

On July 7, 2009, Student filed a statement of non-opposition to the amended complaint.

APPLICABLE LAW

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)(II).)¹ The filing of an amended complaint restarts the applicable timelines for the due process hearing (§1415(f)(1)(B).)

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

DISCUSSION

Student did not oppose District's motion, and amendment of the complaint is appropriate and timely. All applicable timelines shall recommence upon filing of the amended complaint, and the amended complaint shall be deemed filed on the date of this order.

ORDER

1. The motion to amend the due process complaint is granted.
2. The amended complaint is deemed filed on the date of this order.
3. All applicable timelines shall recommence as of the date of this order.
4. The scheduling order is as follows:
 - a. Prehearing Conference-September 2, 2009 at 10:00 a.m.
 - b. Due Process Hearing- September 14-17 and 21-24, 2009.

Dated: August 06, 2009

/s/

STELLA OWENS-MURRELL
Administrative Law Judge
Office of Administrative Hearings