

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN JUAN UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2010050862

ORDER GRANTING MOTION TO
AMEND COMPLAINT

On May 25, 2010, Student filed a Request for Due Process Hearing (complaint), naming San Juan Unified School District (District). The complaint alleged various denials of a free appropriate public education through the date of filing. The parties attended mediation on July 6, 2010, and entered an interim agreement that provided for additional assessments of Student. The hearing was continued to November 15, 2010, at the mediation. On October 21, 2010, Student filed a Motion to Amend the complaint and a proposed amended complaint. The amended complaint changed some of the issues and the time frames at issue as a result of the additional assessments and interim agreement. On October 28, 2010, the Office of Administrative Hearings (OAH) granted the motion and all applicable timelines started over. On the same date, OAH issued a scheduling order setting the matter for hearing on December 16, 2010. On November 4, 2010, the parties jointly requested a continuance of the hearing and agreed to a five-day hearing on January 19 through 21, 25, and 26, 2011.

On December 15, 2010, Student filed a second Motion to Amend the first amended complaint and a proposed second amended complaint. The second amended complaint revises Student's numbered Issue 1 by adding two new charges against the District (failure to offer certain goals in individualized education program (IEP) offers dated October 27, 2009, and October 8, 2010). The proposed second amended complaint adds a new problem, Issue 2, described as District's failure to follow protocols for the administration of an assessment on September 28, 2010. In addition, the proposed second amended complaint adds five new proposed resolutions and eliminates one proposed resolution. District did not file a response to the motion.

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

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).) The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. §1415(f)(1)(B).)

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Speedy resolution of the due process hearing is mandated by law and continuance of the hearing may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f)(3).)

Here, the amendment request is timely and unopposed. However, this matter is set for a five day hearing in January 2011, and has been pending since May 2010. Student knew or should have known that social skills goals or self-advocacy goals were not in his October 2009 or October 2010 IEP prior to his filing of his first amended complaint on October 21, 2010. The purpose of the federal statutory time requirements is to prevent undue delay in resolving special education disputes. Although Student is not asking for a continuance per se, the net result is a continuance of this case since the law requires that all timelines start over unless the parties waive application of that requirement. They have not done so. The parties participated in a mediation on December 9, 2010, and Student's second amended complaint expressly declines to schedule a new mediation in connection with the new timelines OAH must impose in this action. Thus, while Student's motion is granted, the parties should proceed to hearing without further delay.

The second amended complaint is deemed filed on the date of this order. All applicable timelines are reset as of the date of this Order, and all existing dates are vacated. OAH will issue a scheduling order with new hearing and prehearing conference dates.

IT IS SO ORDERED.

Dated: December 27, 2010

/s/

DEIDRE L. JOHNSON
Administrative Law Judge
Office of Administrative Hearings