

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MORGAN HILL UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2010101156

ORDER GRANTING MOTION TO
AMEND COMPLAINT AND
DENYING MOTION TO DISMISS

On October 25, 2010, Student filed a Due Process Hearing Request (complaint), naming District. The due process hearing is set to begin on April 4, 2011. On January 27, 2011, District filed a Motion to Dismiss, upon which OAH has not yet ruled. On February 22, 2011, Student timely filed a Motion to Amend the Due Process Hearing Request (amended complaint). District filed an opposition on February 25, 2011. Student filed a response to District's opposition on February 28, 2011.

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).)¹ 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 proposed amended complaint is based upon the same facts as the original complaint, which related to her November 4, 2008 IEP. The amended complaint adds an additional claim relating to prior written notice in the context of her November 4, 2008 IEP. Granting leave to amend will promote judicial economy by hearing all claims together. Therefore, Student's motion to amend, which was timely filed, 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.

As to the motion to dismiss, although OAH has granted motions to dismiss allegations that are facially outside of OAH jurisdiction, e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc., OAH will not dismiss claims

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

that have otherwise been properly pleaded. The District contends that Student's claims are based upon an April 2008 IEP, which is outside of the statute of limitations, as opposed to her November 2008 IEP, as Student's complaint alleges. However, the District fails to point to any authority that would require OAH to hear and determine the equivalent of a judgment on the pleadings or motion for summary judgment prior to giving a petitioner the opportunity to develop a factual record at hearing. Accordingly, the motion to dismiss is denied because it seeks a ruling on the merits without development of a factual record. Further, in light of the motion to amend being granted, District's motion to dismiss is also moot.

ORDER

1. Student's motion to amend the complaint is granted and all applicable timelines will be reset as of the date of this order. OAH will issue a new scheduling order for the amended complaint.

2. District's motion to dismiss is denied.

Dated: March 4, 2011

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings