BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: DRY CREEK JOINT ELEMENTARY SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2011090491 ORDER GRANTING MOTION TO AMEND COMPLAINT AND DENYING MOTION FOR CONTINUANCE

On September 13, 2011, the Dry Creek Joint Elementary School District (District) filed a Due Process Hearing Request (complaint), against Student. On December 6, 2011, District filed an Amended Due Process Hearing Request (amended complaint). District did not file a motion to amend. The Office of Administrative Hearings (OAH) treats such amended complaints to be a motion to amend. OAH did not receive an opposition to the filing of the amended complaint by Student, though Student did file a response to the amended complaint.

On January 24, 2012, Student filed a motion to continue on the grounds that he continues to seek legal representation. Student's motion sets out further efforts Parents have made since the last continuance in this matter, which was also on the same grounds. On January 27, 2012, District filed an opposition to the request to continue on the grounds, primarily, that a continuance will cause unnecessary delay in this matter.

APPLICABLE LAW AND DISCUSSION

Amendment to 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).)[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).)

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

Here, OAH should have ruled upon the request to amend District's complaint in December 2011, even though District did not file a formal motion to its amended complaint. 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. All currently set dates are vacated and OAH will issue a scheduling order with the new dates.

Motion to Continue

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).) In ruling upon a motion for continuance, OAH is guided by the provisions found within the Administrative Procedure Act and the California Rules of Court that concern motions to continue. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, rule 3.1332 .) Generally, continuances of matters are disfavored. (Cal. Rules of Court, rule 3.1332(c).)

As discussed above, the currently set dates are vacated and OAH will issue a new scheduling order. Therefore, Student's motion to continue is moot and is denied.

ORDER

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

2. All dates are vacated and OAH will issue a new scheduling order.

3. Student's motion to continue is denied.

Dated: January 30, 2012

/s/

BOB N. VARMA
Presiding Administrative Law Judge
Office of Administrative Hearings