

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SANTA MONICA-MALIBU UNIFIED  
SCHOOL DISTRICT.

OAH CASE NO. 2011091066

ORDER GRANTING MOTION TO  
AMEND COMPLAINT AND  
DENYING REQUEST TO KEEP  
DATES ON CALENDAR

On September 29, 2011, Student filed a Due Process Hearing Request (complaint), naming Santa Monica-Malibu Unified School District (District). On February 13, 2012, Student filed a Motion to Amend the Due Process Hearing Request (with a proposed amended complaint). Student also requested that the presently set Prehearing Conference (PHC), March 5, 2012, and due process hearing, March 20 – 22 and 27 – 29, 2012, dates remain as calendared. On February 16, 2012, the District filed a reply stating that it did not oppose amendment of the complaint, but did oppose the maintenance of the currently set PHC and hearing dates.

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).)<sup>1</sup> The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. § 1415(c)(2)(E)(ii).)

The motion to amend is timely and is granted because Student amended the complaint to add more recent factual contentions, the request was made more than five days before the hearing commenced, and it is Student's first request to amend the complaint.

As to the Student's request to keep the PHC and due process hearing dates that are presently calendared, the granting of Student's amended complaint recommences the applicable timelines, including the 30-day resolution session period. (20 U.S.C. §§ 1415(c)(2)(E)(ii) & (f)(1)(B).) Student did not obtain a written waiver of the resolution session and the District's reply does not state that the District waives the resolution session. Without a waiver of the resolution session the Office of Administrative Hearings cannot

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<sup>1</sup> All statutory citations are to Title 20 United States Code unless otherwise indicated.

conduct the PHC or due process during the 30-day resolution session period. (20 U.S.C. §§ 1415(f)(1)(B)(i)(IV) & (f)(1)(B)(ii).)

Accordingly, 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.

IT IS SO ORDERED.

Dated: February 21, 2012

/s/

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PETER PAUL CASTILLO  
Administrative Law Judge  
Office of Administrative Hearings