

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

TEMPLETON UNIFIED SCHOOL  
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2012030518

ORDER GRANTING MOTION TO  
AMEND COMPLAINT, DENYING  
MOTION TO DISMISS AND  
GRANTING JOINT REQUEST FOR  
CONTINUANCE

On March 14, 2012, the Templeton Unified School District (District) filed a Due Process Hearing Request (complaint), against Student. On March 21, 2012, District filed an Amended Due Process Hearing Request (amended complaint). District did not file a motion to amend, however, the Office of Administrative Hearings (OAH) treats the filing of an amended complaint as a motion to amend. On March 26, 2012, Brad Bailey, advocate for Student, filed a response to the amended complaint and a motion to dismiss. Finally, on March 26, 2012, the parties filed a joint request to continue the dates in this matter.

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).)<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).)

Under the Individuals with Disabilities Education Act, a complaint is required to meet minimum pleading standards. Specific to Student's motion, a complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (20 U.S.C. §1415(b)(7)(A)(ii)(IV).)

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.

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

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, the Office of Administrative Hearings (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).)

## DISCUSSION

District's amended complaint is timely filed. Student seeks to dismiss the amended complaint on the grounds that it fails to set forth proposed resolutions. Apart from this contention, Student does not oppose the filing of the amended complaint. With respect to Student's contention, the amended complaint raises two specific issues, both concerning assessments conducted by District. District contends that the assessments were appropriately conducted, and seeks an order that it has appropriately assessed Student and that Student is not entitled to independent educational evaluations (IEE's). District is required to set forth proposed resolutions know at the time of the filing of the amended complaint. Here, District's proposed resolutions are specific and well-drafted, in that it seeks a finding that Student is not entitled to IEE's. Accordingly, District's amended complaint is deemed filed as of the date of this order. Furthermore, Student's motion to dismiss the amended complaint is denied.

When an amended complaint is filed, OAH will reset the 45-day decision time line and issue new dates. Here, the parties have filed a joint request to continue the matter, even though OAH has not yet issued a new scheduling order. The dates requested by the parties, May 15 through 17, 2012, would fall outside of the 45-day time line, with the amended complaint being filed as of the date of this order. Accordingly, OAH will consider the parties requested dates as a motion to continue even though OAH has yet to issue new dates on the amended complaint. Having considered the parties' joint request, good cause exists and the request is granted.

## ORDER

1. District's amended complaint is deemed filed as of the date of this order. All applicable time lines for the issuance of a decision are reset.
2. Student's motion to dismiss the amended complaint is denied.

3. The parties' joint request to continue is granted. This matter is set as follows: mediation shall take place on April 26, 2012, at 9:30 AM; the prehearing conference shall take place on May 7, 2012, at 1:30 PM; and the due process hearing shall take place on May 15 through 17, 2012, starting at 9:30 AM.

Dated: March 26, 2012

/s/

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