

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FRUITVALE SCHOOL DISTRICT.

OAH CASE NO. 2012030900

ORDER GRANTING MOTION TO  
AMEND COMPLAINT

On March 22, 2012, Parent on behalf of Student (Student) filed a Request for Due Process Hearing (complaint), naming Fruitvale School District (District), Kern County Superintendent of Schools (Superintendent) and Kern County Consortium Special Education Local Plan Area (SELPA).<sup>1</sup> On April 25, 2012, Student filed a Motion to Amend the Due Process Hearing Request (amended complaint).

During the phone call with parties on April 25, 2012,<sup>2</sup> District argued in opposition of the Motion based on timeliness. District's opposition was overruled for the reasons discussed below.

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).)<sup>3</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).)

---

<sup>1</sup> On April 24, 2012, pursuant to separate motions by SELPA and the Superintendent, OAH issued an order dismissing both SELPA and the Superintendent.

<sup>2</sup> Parties were originally scheduled to participate in a prehearing conference (PHC) on April 25, 2012. However, due to this pending Motion to Amend the Complaint, the PHC was not held.

<sup>3</sup> All statutory citations are to title 20 United States Code unless otherwise indicated.

The Motion to Amend is timely. The Due process hearing in this matter is currently set to begin on May 2, 2012. Student's Motion was made more than five days before the hearing commenced. Thus, the Motion to Amend is timely, and is thus granted.

On April 23, 2012, District filed a Motion to Dismiss Student's complaint on the basis that Student's remaining sole issue is barred by the statute of limitation. Because this order grants leave to Student to amend his complaint, District Motion to dismiss the original complaint is moot. District may file all appropriate requests regarding Student's amended complaint.

#### ORDER

1. Student's Motion to amend is granted.
2. The amended complaint shall be deemed filed on the date of this order.
3. All applicable timelines shall be reset as of the date of this order. OAH will issue a scheduling order with the new dates.
4. District's April 23, 2012 motion to dismiss is denied as moot.

IT IS SO ORDERED.

Dated: April 25, 2012

/s/

---

ADENIYI AYOADE  
Administrative Law Judge  
Office of Administrative Hearings