

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

OAKLAND UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2012051022

ORDER GRANTING STUDENT'S  
MOTION TO AMEND COMPLAINT

On May 22, 2012, Student filed a request for due process (complaint) against Oakland Unified School District (District) with the Office of Administrative Hearings (OAH). On July 17, 2012, District filed a Notice of Representation naming Lenore Silverman, Esq. and Melanie D. Seymour, Esq. of Fagen, Friedman, & Fulfroost, L.L.P., as its attorneys of record in this matter. On July 24, 2012, Student filed an amended complaint adding a new issue that apparently accrued after the filing of the original complaint. District did not file any opposition to Student's filing of an amended complaint.

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)(II).) The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. § 1415(f)(1)(B).) The Individuals with Disabilities Education Act (IDEA) does not set forth a specific motion practice process. (20 U.S.C. § 1415.) The IDEA sets forth when a party may amend its complaint, but does not require a specific motion to amend. (20 U.S.C. § 1415(c)(2)(E)(i).)

The IDEA requires that a party filing a due process complaint serve the other party with a copy of that complaint. (20 U.S.C. § 1415(b)(7); Ed. Code, § 56502, subd. (c)(1).) A party is not entitled to a due process hearing until these requirements are met.

## DISCUSSION

Student's amended complaint was not accompanied by a separate motion to amend. OAH deems amended complaints, without accompanying motions, as a motion to amend and an amended complaint. This is done so that OAH may examine whether the amended complaint is consistent with the requirements of the IDEA and if proper, issue a formal order that will reset the applicable time lines. OAH follows this procedure regardless of whether the other party in the matter files an opposition.

Student's proof of service states that he served the amended complaint directly on the District and the school at issue, rather than on District's attorneys of record. Title 20 United States Code section 1415(b)(7) and Education Code section 56502, subdivision (c)(1), specify service of the complaint on the other party. Here, Student complied with the requirement, but did not serve District's counsel with a copy of the amended complaint. However, at the request of District's counsel, OAH provided District's counsel with a copy of the complaint on July 26, 2012. No prejudice has been alleged, or is apparent, from the fact that District's counsel received a copy of the amended complaint from OAH instead of from Student.

Based on the foregoing, Student's timely motion to amend the complaint is granted. Student's amended complaint will be deemed to have been filed as of the date of this order. All dates are vacated and a new Scheduling Order will issue based upon a filing date of July 31, 2012.

## ORDER

1. Student's motion for leave to amend the complaint is granted and the amended complaint is deemed filed as of the date of this order.
2. All currently set dates are vacated. OAH shall issue a new Scheduling Order.

Dated: July 31, 2012

/s/

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JOAN HERRINGTON  
Administrative Law Judge  
Office of Administrative Hearings