

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

NAPA VALLEY UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2012051226

ORDER GRANTING MOTION TO  
AMEND COMPLAINT AND DENYING  
MOTION TO CONTINUE

On May 30, 2012, Student filed a Due Process Hearing Request (complaint) with the Office of Administrative Hearings, naming the Napa Valley Unified School District (District).

On September 5, 2012, Student filed a motion for leave to amend the complaint (motion to amend), together with a first amended due process hearing request (first amended complaint). The District filed an opposition on September 10, 2012. On September 14, 2012, OAH granted Student leave to amend the complaint and the first amended complaint was deemed filed on that date. Pursuant to the law, the applicable timelines for the due process hearing were reset as of September 14, 2012.

On October 25, 2012, Student filed a second motion for leave to amend the first amended complaint (second motion to amend), together to the second amended due process hearing request (second amended complaint).<sup>1</sup> On October 30, 2012, District filed a ‘partial’ opposition to Student’s second motion to amend.

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.

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<sup>1</sup> Concurrently with its motion to amend, Student filed a motion to continue the due process hearing. As Student’s motion to amend is granted and all applicable hearing timelines reset, Student’s motion to continue is deemed moot and denied.

§1415(c)(2)(E)(i).)<sup>2</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).)

This matter is currently set for a prehearing conference (PHC) on October 31, 2012, with hearing set to commence on November 8, 2012. In its second motion to amend, Student explains that since the filing of the first amended complaint, a new individualized educational program (IEP) team meeting was held on October 11, 2012, which led to new IEP offers for 2012-2013 school year (SY). Thus, Student contends that the second amended complaint is necessitated due to this new offer for the 2012-2013 SY. Further, a new independent assessment of Student was completed this week which requires amendment and clarification of previously pled issues.

The District opposes the motion on many grounds, all of which have been evaluated. While District's arguments have some merits, the OAH cases cited by District in support of its request that OAH deny Student leave to amend his complaint are unpersuasive. First, the OAH cases cited, where OAH issued orders denying a party leave to amend a complaint, have different factual bases. The determination of whether a motion to amend should be granted is based on careful evaluation and balancing of the equities and/or actual or potential prejudices to either side if leave to amend is to be granted. However, in the instant case District has not argued nor established that it will be prejudiced in any manner, if Student is allowed to amend his complaint a second time. In fact, District, in its response, seems unconcerned with the issue of delay in this matter proceeding to hearing, a factor in most of the cases District cited. Instead District argues that all hearing dates should be vacated and the applicable timelines reset should OAH grant Student leave to amend.

Therefore, Student's motion to amend is timely and 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. OAH will issue a scheduling order with the new dates.

IT IS SO ORDERED.

Dated: October 31, 2012

/s/

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ADENIYI A. AYOADE  
Administrative Law Judge  
Office of Administrative Hearings

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<sup>2</sup> All statutory citations are to title 20 United States Code unless otherwise indicated.