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 to Amend the Due Process Hearing Request (amended complaint). The District filed an opposition on September 10, 2012.[1]

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).)[2] 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's amended complaint adds new allegations regarding the District's August 30, 2012 offer of a free appropriate public education (FAPE) for the 2012-2013 school year. Student's original complaint alleged that the District's then offer as of May 30, 2012, did not provide him with a FAPE for the 2012-2013 school year. The District opposes the motion on the grounds that the August 30, 2012 FAPE offer can be heard separately from Student's challenge to the District's FAPE offer that existed as of May 30, 2012. However, the issue of whether District's August 30, 2012 offer provides Student with a FAPE is too intertwined with Student's issue in the original complaint whether the District offered him a FAPE for the 2012-2013 school year, especially if Student prevails and OAH orders a non-public school

[1] Student concurrently filed a motion to continue the due process hearing. As Student's motion to amend is granted, which resets the applicable hearing timelines with a new hearing date, Student's motion to continue is denied as moot.

[2] All statutory citations are to title 20 United States Code unless otherwise indicated.

placement for the remainder of the school year. The District could then file a subsequent complaint to have OAH determine that its August 30, 2012 offer provided Student with a FAPE and that he should attend a District school. Finally, Student's request was made more than five days before the hearing commenced, and is Student's first request to amend the complaint. Therefore, Student established good cause for the amended complaint.

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: September 14, 2012

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings