

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENTS ON BEHALF OF STUDENT,

OAH CASE NO. 2012070992

v.

CLOVIS UNIFIED SCHOOL DISTRICT,

CLOVIS UNIFIED SCHOOL DISTRICT,

OAH CASE NO. 2012080216

v.

PARENTS ON BEHALF OF STUDENT.

ORDER DENYING MOTION TO
DISMISS CLAIMS AS MOOT

On July 30, 2012, Student filed a Request for Due Process Hearing (complaint) against the Clovis Unified School District (District) in Office of Administrative Hearings (OAH) case number 2012070992.

On August 13, 2012, the District filed a Motion to Dismiss Issues A and B in Student's complaint. On August 15, 2012, Student dismissed Issue E in his complaint. On August 16, 2012, Student filed an opposition to the District's motion to dismiss. On August 17, 2012, OAH issued an order that dismissed Issues A and B, and held that the matter would proceed as scheduled as to Issues C and D.

On August 23, 2012, the District filed a motion to dismiss Issues A and B as the District considered Student's August 15, 2012 pleading that dismissed Issue E to be an amended complaint. On August 28, 2012, Student filed an opposition contending that the District's motion was inappropriately filed because there was no 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).)¹ The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. §1415(c)(2)(E)(ii).)

DISCUSSION and ORDER

Student's August 15, 2012 pleading that dismissed Issue E was not an amended complaint as Student merely dismissed an issue for hearing and did not include any new allegations, claims or proposed resolutions. OAH never considered Student's pleading to be an amended complaint and therefore never issued a new scheduling order that reset the applicable timelines for the due process hearing. Accordingly, the District's August 23, 2012 motion to dismiss is denied as moot because there was no amended complaint from Student.

IT IS SO ORDERED.

Dated: August 29, 2012

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings

¹ All statutory citations are to Title 20 United States Code unless otherwise indicated.