

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

KERN COUNTY SUPERINTENDENT OF
SCHOOLS, PANAMA BUENA VISTA
UNION SCHOOL DISTRICT.

OAH CASE NO. 2012080556

ORDER GRANTING MOTION TO
AMEND COMPLAINT

On August 20, 2012, Student filed a request for a due process hearing (complaint) naming the Kern County Superintendent of Schools (County) and the Panama Buena Vista Union School District (District). On October 2, 2012, Student filed an amended complaint, deemed to be a motion to amend the complaint. On October 4, 2012, County and District filed a response indicating they do not oppose the motion.

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).)¹ The filing of an amended complaint restarts the applicable timelines for the due process hearing unless the parties waive application of that requirement. (20 U.S.C. §1415(c)(2)(E)(ii).)

The granting of a motion to amend is discretionary. Counsel for Student did not file a motion to amend which would have provided notice to County, District, and OAH of the nature of the proposed changes to Student's complaint, and is admonished to do so in future cases. The motion should generally identify what factual allegations, issues, and/or proposed resolutions were eliminated, modified, or added, for example, to facilitate the administrative law judge's evaluation of the motion, particularly where a party opposes the motion.

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

Here, without searching and comparing the original complaint and the proposed amended complaint, the amendments are unknown but result in a filing two pages longer than the original filing. The due process hearing is set for October 16, 2012, and the motion was made more than five days before the hearing. Therefore, the motion to amend is timely. While the motion is not opposed by either of the responding parties, County and District expressly do not waive the statutory restart requirement, which encompasses various rights and responsibilities of the parties, including a new resolution session period. Based on the foregoing, Student's motion to amend her complaint is granted.

ORDER

1. Student's amended complaint shall be deemed filed on the date of this order.
2. All applicable timelines shall be reset as of the date of this order. OAH will issue a scheduling order with new scheduling dates.

Dated: October 8, 2012

/s/

DEIDRE L. JOHNSON
Administrative Law Judge
Office of Administrative Hearings