

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

SAN MATEO-FOSTER CITY SCHOOL
DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NO. 2012080913

ORDER GRANTING MOTION TO
AMEND COMPLAINT

On August 28, 2012, the San Mateo-Foster City School District (District) filed with the Office of Administrative Hearings (OAH) a request for a due process hearing (complaint) naming Student. Effective November 29, 2012, District filed an amended complaint, deemed to be a motion to amend the complaint.¹ On November 30, 2012, Student filed a response indicating he does 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); Ed Code § 56502, subd. (e).)² The filing of an amended complaint recommences 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); Ed Code § 56502, subd. (e).)

The granting of a motion to amend is discretionary. Counsel for the District did not file a motion to amend which would have provided notice to Student and OAH of the nature of the proposed changes to District's complaint, and is advised to do so in future cases. The motion should briefly 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 District's document was filed after close of business on November 28, 2012.

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

Here, Student does not consent in writing to the motion but does not oppose it. Since District's complaint is not lengthy, a cursory comparison with the proposed amended complaint shows that District's modifications include changing its sole issue for hearing based upon added factual allegations regarding a November 2012 individualized education program (IEP) meeting and offer of placement and services. The amended complaint thus changes the nature of District's IEP offer to be litigated in this proceeding.

The due process hearing is set for December 11, 2012, with a prehearing conference on December 5, 2012. The motion was made more than five days before the hearing and is therefore timely. Student does not waive the statutory restart requirement, which encompasses various rights and responsibilities of the parties. Based on the foregoing, District's motion to amend its complaint is granted.

ORDER

1. District'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: December 4, 2012

/s/

DEIDRE L. JOHNSON
Administrative Law Judge
Office of Administrative Hearings