

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

CALIFORNIA VIRTUAL ACADEMY,
EAST SAN GABRIEL VALLEY SELPA,
AND WEST COVINA UNIFIED SCHOOL
DISTRICT

OAH CASE NO. 2013030131

ORDER AFFIRMING ORDER
GRANTING LEAVE TO AMEND
COMPLAINT PURSUANT TO ORDER
OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT DATED MARCH 21,
2013

On March 4, 2013 Student filed a Due Process Hearing Request¹ (complaint) pursuant to the Individuals with Educational Disabilities Act (IDEA) naming California Virtual Academy (CVA), East San Gabriel Valley Special Education Local Plan Area (SELPA), and West Covina Unified School District (District).

On March 19, 2013, CVA filed a Notice of Insufficiency (NOI) as to the complaint. On March 22, 2013, the Office of Administrative Hearings (OAH) issued an order of Determination of Sufficiency of Due Process Complaint (order of sufficiency) finding Student's complaint partly sufficient and partly insufficient based on the requirements of Title 20 United States Code section 1415(b)(7)(A). The order provided that Student be permitted to file an amended complaint not later than 14 days from March 22, 2013, the date when the order was issued.

On April 4, 2013, Student filed a motion to amend (motion) the due process request, and submitted an Amended Due Process Hearing Request (amended complaint) together with the motion. SELPA filed an opposition to the motion on April 8, 2013, and no reply or opposition was received from District.

APPLICABLE LAW AND DISCUSSION

Generally, 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

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under Title 20 United States Code section 1415(b)(7)(A).

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).)

Here, the leave to amend the complaint was granted by OAH through its order of sufficiency issued on March 22, 2013. The leave to amend was properly granted by OAH because, on the day the leave was granted by OAH, the due process hearing was not scheduled to begin within five (5) days.³ On April 4, 2013, Student timely filed an amended complaint pursuant to the March 22, 2013 order. Therefore, the basis of SELPA's opposition to Student's motion to amend is unclear.⁴

Therefore, pursuant to OAH's order of sufficiency issued on March 22, 2013 permitting the amendment, the amended complaint is timely and properly filed. It is deemed filed on April 4, 2013 and all applicable timelines are reset as of the date of filing of the amended complaint.⁵

IT IS SO ORDERED.

Dated: April 9, 2013

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings

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

³ The due process hearing was then scheduled to begin on May 2, 2013.

⁴ It appears that the basis of SELPA's opposition to Student's motion to amend is that the amended complaint "*fails to alleged facts ... that SELPA had any responsibility in determining and/or providing ... a free appropriate public education.*" This stated ground for opposition appears improper, as other available remedies under the IDEA may be more appropriate.

⁵ On April 4, 2013, OAH issued a new scheduling order with the new mediation, prehearing conference and due process hearing dates.