

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ADELANTO SCHOOL DISTRICT.

OAH CASE NO. 2013070471

ORDER GRANTING STUDENT'S  
REQUEST TO WITHDRAW ISSUE

On July 11, 2013, Attorney Egon Mittelman, representing Parent on behalf of Student (Student), filed with the Office of Administrative Hearings (OAH) a Due Process Hearing Request (complaint), naming the Adelanto School District (District). On July 24, 2013, Student filed a request to withdraw, without prejudice, a portion of Issue One, namely that the District failed to provide him with occupational therapy. No opposition was received from the District.

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).) 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

Student may seek leave to amend his complaint prior to hearing. However, Student by requesting to withdraw one allegation is not amending the complaint but rather limiting the issues for hearing. A party is entitled to withdraw any issue at any time prior to the hearing without need for approval from OAH. Therefore, Student's request to withdraw a portion of Issue One, namely his contention that he was denied occupational therapy during the 2012-2013 school year, is granted. If Student wishes to add this issue back into the complaint, or allege new issues, Student will need to file a motion to amend the complaint. (20 U.S.C. § 1415(c)(2)(E)(i).)

ORDER

1. Student's request to withdraw his issue regarding the District's failure to provide occupational therapy during the 2012-2013 school year is granted without prejudice.
2. The matter shall proceed as scheduled on the remainder of Student's Issue One.

Dated: July 30, 2013

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THERESA RAVANDI  
Administrative Law Judge  
Office of Administrative Hearings