

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

OAKLAND UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2014041135

ORDER GRANTING MOTION TO
AMEND COMPLAINT, DEEMING
DISTRICT'S MOTION TO DISMISS
MOOT, AND ORDERING PARTIES TO
PARTICIPATE IN MANDATORY
EARLY RESOLUTION SESSION

On April 24, 2014, Parent on Student's behalf filed a Due Process Hearing Request (complaint), naming Oakland Unified School District. On May 8, 2014, Student filed a request to amend the issues in the original complaint by clarifying and extending the scope of one of two issues. District did not respond to Student's motion to amend. However, on May 13, 2014, District filed a motion to dismiss on the ground that Parents failed to participate in a mandatory early resolution session. As discussed below, Student's motion to amend is granted, and therefore District's motion to dismiss is moot for purposes of the original 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).)

A local educational agency (LEA) is required to convene a meeting with the parents and the relevant members of the Individualized Education Program (IEP) team within 15 days of receiving notice of the Student's complaint. (20 U.S.C. § 1415(f)(1)(B)(i)(I); 34 C.F.R. § 300.510(a)(1) (2006).) The resolution session need not be held if it is waived by both parties in writing or the parties agree to use mediation. (34 C.F.R. § 300.510(a)(3).) If the parents do not participate in the resolution session, and it has not been otherwise waived by the parties, a due process hearing shall not take place until a resolution session is held. (34 C.F.R. § 300.510(b)(3).) If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made and documented, the LEA

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

may, at the conclusion of the 30-day period, request that a hearing officer dismiss the complaint. (34 C.F.R. §300.510(b)(4).)

DISCUSSION

The motion to amend, which Parent intended to clarify and supplement the original complaint, is timely and is granted. The complaint shall consist of the original complaint, as amended by Issue Two in Student's Motion to Amend Issues. All applicable timelines shall be reset as of the date of this order. OAH will issue a scheduling order with the new dates.

District's motion to dismiss the complaint because of Parent's failure to participate in a mandatory early resolution session is moot because all timelines in this matter will be reset, including the 30-day resolution period. Parent contends in its opposition to District's motion to dismiss that Parent did not request mediation and was therefore not obligated to participate in mediation. However, mediation, which is voluntary, is different from the mandatory resolution session required under the IDEA. Accordingly, as noted above, Parent must participate in a resolution session within 30 days of the date of this order, unless the resolution session is waived in writing by both parties. If Parent refuses or fails to participate, District may refile its motion to dismiss.

ORDER

1. Student's motion to amend is granted and the amended complaint is deemed filed on the date of this order.
2. All timelines shall be reset as of the date of this order and OAH will issue a new scheduling order consistent with those timelines.
3. District's motion to dismiss is moot.
4. The parties shall participate in a resolution session within 30 days of the date of this order unless both parties waive the resolution session in writing.

DATE: May 14, 2014

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings