

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
SPECIAL EDUCATION DIVISION
STATE OF CALIFORNIA

In the Matters of:

SAN JOSE UNIFIED SCHOOL DISTRICT,

Petitioner,

v.

STUDENT,

Respondent.

OAH CASE NO. N2006050485

STUDENT,

Petitioner,

v.

SAN JOSE UNIFIED SCHOOL DISTRICT,

Respondent.

OAH CASE NO. N2006060927

**ORDER GRANTING MOTION TO
AMEND**

On May 12, 2006, the Office of Administrative Hearings (OAH) received from attorney Peter Sturges a request for due process hearing (complaint) on behalf of San Jose Unified School District (District), naming as the Respondent Student. On June 28, 2006, OAH received from attorney F. Richard Ruderman a request for due process hearing (complaint) on behalf of Student, naming District as the Respondent. These matters were consolidated by an OAH order on July 18, 2006.

On January 25, 2007, Student filed a motion to amend Student's complaint accompanied by an amended complaint. On February 5, 2007, District filed opposition to the motion to amend the complaint.

APPLICABLE LAW AND DISCUSSION

The reauthorized Individuals with Disabilities Education Improvement Act (IDEIA) became effective July 1, 2005, and significantly amended Title 20 U.S.C. section 1415(b) and (c)¹. Under the amended sections, 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 permissions, provided the request occurs more than 5 days prior to the due process hearing (§1415(c)(2)(E).) In either case, the filing of an amended complaint restarts the applicable timelines for due process hearing pursuant to §1415(f)(1)(B).

Student's original complaint alleges denial of a free and appropriate public education (FAPE) in the 2005-2006 and 2006-2007 school years beginning with a October 5, 2005, individualized education plan (IEP) and through a May 18, 2006, IEP. The amended complaint adds allegations stemming from a behavior support plan developed by District on May 4, 2005, and presented at an IEP team meeting on May 17, 2005. In addition, the amendments add allegations regarding failure to conduct a functional analysis assessment and behavior intervention plan for Student and add facts relating to those and the allegations in the original complaint.

In justification of amending the complaint at this time, Student indicates that, when the original complaint was filed, Student's school placement for the 2006-2007 school year had not been resolved. Now, due to Student's placement pursuant to a mediation agreement on August 10, 2006, Student no longer seeks placement at Spectrum, a nonpublic school, as requested in the original complaint. In addition, behavior issues and resultant suspensions in January 2007 need to be addressed and it is far more expeditious and fair to the parties to have all issues resolved in one hearing, rather than requiring Student to file another request for due process hearing.

While the amended complaint does expand the timeframe of the allegations back a few months, those allegations and the other added allegations relate to the FAPE issues stated in the original complaint. It is in the interest of judicial economy to permit amendment of the complaint at this time. The due process hearing on the original complaint is currently set for five days in April and it is unlikely that the parties will need more than five days to complete the hearing on the amended complaint. Furthermore, District is not prejudiced by the amendment of the complaint at this time, since there is sufficient time prior to the April hearing to conduct a resolution session or mediation on the amended complaint.

Amendment of the complaint at this time is appropriate and timely and the motion to amend is granted. Pursuant to §1415(c)(2)(E) all applicable timelines recommence upon filing of the amended complaint. The amended complaint shall be deemed filed on the date of this order.

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

ORDER

1. The motion to amend the due process complaint is granted.
2. All applicable timelines shall recommence beginning the date of this order.
3. The hearing dates remain on calendar.

Dated: February 8, 2007

SHERIANNE LABA
Presiding Administrative Law Judge
Special Education Division
Office of Administrative Hearings