

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FULLERTON ELEMENTARY SCHOOL
DISTRICT.

OAH CASE NO. 2010120918

ORDER GRANTING MOTION TO
AMEND COMPLAINT

On December 22, 2010, Parent on behalf of Student (Student), filed a Due Process Hearing Request (complaint), naming the Fullerton Elementary School District (District). On March 31, 2011, Student filed a Motion to Amend the Complaint.¹ Attached to the motion as an exhibit was the proposed amended complaint (amended complaint). On April 5, 2011, the District filed an opposition. On April 6, 2011, Student filed a reply to the District's opposition.

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).)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).)

Student's complaint pled two issues: whether the December 16, 2010 Individualized Education Program (IEP) provided Student with a free appropriate public education (FAPE), and whether the District predetermined its offer of speech and behavior services at that IEP team meeting. Student's amended complaint contains five issues. Issue one alleges that the District committed a procedural violation of the Individuals with Disabilities Education Act (IDEA) by making unilateral changes to Student's IEP without holding an IEP meeting in June 2010. Issues two and three restate issues one and two of the complaint. Issue four states with more specificity part of the allegation that the December 16, 2010 IEP failed to provide Student with a FAPE in the area of speech. Issue five involves whether the District

¹ The motion was not officially filed by OAH until April 14, 2011, which was the date that the full motion was received.

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

failed to fulfill its stay-put obligations following the stay-put order OAH issued on January 18, 2011.

Permitting the filing of the amended complaint will result in judicial economy and the District will not suffer any prejudice. The motion to amend is timely and is granted. The amended complaint shall be deemed filed on the April 14, 2011. All applicable timelines shall be reset as of April 14, 2011. OAH will issue a scheduling order with the new dates.

IT IS SO ORDERED.

Dated: April 19, 2011

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings