BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2016090918
v.	ORDER DENYING MOTION TO AMEND COMPLAINT
BUENA PARK SCHOOL DISTRICT.	

On September 19, 2016, Student filed a Due Process Hearing Request (complaint) with the Office of Administrative Hearings, naming Buena Park School District.

On February 2, 2017, Student filed an Amended Due Process Hearing Request (amended complaint), which is treated as a motion to amend. On February 6, 2017, District filed an opposition on numerous grounds. As discussed below, the motion to amend the complaint is denied. The hearing will commence as scheduled.

APPLICABLE LAW AND DISCUSSION

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).)

The motion to amend was filed on February 2, 2017. The hearing is set to commence tomorrow, February 7, 2017. The hearing officer may grant permission to amend, but only provided that the permission is granted "more than five (5) days prior to the due process hearing." Here, since the motion to amend was filed on, and not before, the fifth day prior to the hearing, "more than five days" notice was not provided, the motion is untimely and permission to amend is not granted.

In addition, in this case the prehearing conference was held on January 27, 2017. The Prehearing Conference Order, issued on January 30, 2017 stated: "Any motion filed after this date shall be supported by a declaration under penalty of perjury establishing good cause as to why the motion was not made prior to or during the prehearing conference of January 27, 2017." The amended complaint was not supported by a declaration establishing good cause as to why the amended request was not filed before the prehearing conference on January 27, 2017. Student raised issues in the amended complaint that Student was aware of before the complaint was filed. District argues that it is prejudiced if Student is permitted to amend the

complaint two business days before the hearing, and that amending the complaint will not result in an increase in fairness or result in judicial efficiency or economy.

Accordingly, the motion to amend is denied. All previously set dates shall remain on calendar.

IT IS SO ORDERED.

DATE: February 6, 2017

DocuSigned by:
June Lehrman
JUNE R. LEHRMAN
Presiding Administrative Law Judge
Office of Administrative Hearings