BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SAN MATEO-FOSTER CITY SCHOOL DISTRICT.	OAH Case No. 2015050320 ORDER DENYING MOTION TO FILE SECOND AMENDED COMPLAINT

On April 30, 2015, Student filed a Due Process Hearing Request naming San Mateo-Foster City School District. On June 1, 2015, the Office of Administrative Hearings granted the parties' joint request for a continuance. On July 9, 2015, OAH granted a further continuance at the parties' request.

On September 1, 2015, Student filed a motion to amend her complaint. On September 3, 2015, OAH granted Student's motion to amend and the amended complaint was deemed filed as of September 3, 2015. This matter is scheduled for hearing starting on October 28, 2015.

On October 12, 2015, Student filed a second amended complaint which is deemed a motion to file a second amended complaint. On October 14, 2015, San Mateo-Foster City filed an opposition to Student's second motion to amend her complaint on the grounds that Student's newly asserted claim is not ripe for resolution.

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).)

[1] All statutory citations are to title 20 United States Code unless otherwise indicated.

DISCUSSION

Student seeks to add a new allegation that San Mateo-Foster City failed to timely assess Student pursuant to a June 30, 2015 assessment plan and timely hold an individualized education program team meeting. Student has already been granted permission to file an amended complaint. Student now wishes to litigate a new claim based on acts occurring or failing to occur as the current school year unfolds. Student's initial complaint has been pending for nearly six months and these issues need to reach adjudication in a timely manner as required by the Individuals with Disabilities Education Act. This matter has been continued twice pursuant to the parties' requests for continuance and continued a third time as a consequence of Student's first amended complaint. Although Student proposes litigating the new issue on the currently calendared dates, San Mateo-Foster City opposes the amendment and has a right to proceed to a resolution session on Student's proposed additional claim.

Accordingly, Student's request to further amend her complaint is denied.[2] Student has the right to file a separate due process complaint alleging issues separate from those raise within her first amended complaint. (20 U.S.C. § 1415(o); 34 C.F.R. § 300.513(c); Ed. Code, § 56509.)

ORDER

1. Student's motion to file a second amended complaint is denied.

2. All dates remain as previously set.

DATE: October 15, 2015

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings

[2] No determination is made as to whether Student's proposed amended claim is ripe for adjudication.