BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. ANTIOCH UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017080513 ORDER DENYING STUDENT'S MOTION TO ADD ISSUE

On February 19, 2018, Student filed a motion to add an issue inadvertently omitted by counsel. On February 21, 2018, Antioch Unified School District filed an opposition to Student's motion asserting that this request is a third attempt to amend Student's complaint, that granting the motion does not further justice, and prejudices Antioch.

Student originally filed his due process complaint on August 10, 2017. Student filed a motion to amend his due process complaint on November 13, 2017 and Antioch did not oppose. On January 16, 2018, Student filed a second motion to amend his due process complaint, again, Antioch did not oppose. Student's request to file a second amended complaint was granted on January 19, 2018.

In Student's first amended complaint issue number nine read as the following: "Whether the District's placement, given its failure to assess and identify Student's needs, failure to create goals to address his unique needs, and failure to implement the agreed-upon behavior services was FAPE for Nikola during 2016 and the 2016-2017 school year." The above issue was omitted from the second amended complaint.

Now Student seeks an order to add issue number nine as previously pled in the first amended complaint to the second amended complaint. In Student's motion, Student contends issue nine as described above was left off of his second amended complaint due to "mistake, inadvertence, surprise, or excusable neglect," of counsel (C.C.P § 473 (a), (b)). Student is attempting a backdoor amendment to the complaint. This is not the proper vehicle for seeking to amend a due process complaint under the IDEA. The IDEA

provides a procedural vehicle for amending due process complaints. (20 U.S.C § 1415 (c)(2)(E)(i).) Student's motion is improper and the motion is denied.

IT IS SO ORDERED.

DATE: February 21, 2018

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Tiffany Gilmartin
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TIFFANY GILMARTIN
Administrative Law Judge
Office of Administrative Hearings