BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. DEL MAR UNION SCHOOL DISTRICT.	OAH Case No. 2018020023 ORDER GRANTING MOTION TO AMEND COMPLAINT

On January 30, 2018, Student filed a Due Process Hearing Request (complaint) with the Office of Administrative Hearings, naming Del Mar Union School District. On May 22, 2018, Student filed a Motion to Amend the Due Process Hearing Request (amended complaint). District filed in response to the motion on May 23, 2018. Although District did not oppose the motion, it objected to continuing the hearing date set for the action.

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).)

A local educational agency is required to convene a resolution meeting with the parents and the relevant members of the Individualized Education Program team within 15 days of receiving notice of the Student's complaint or, as in this case, an amended complaint. (20 U.S.C. § 1415(f)(1)(B)(i)(I); 34 C.F.R. § 300.510(a)(1) (2006).) The resolution session need not be held if it is waived by both parties in writing or the parties agree to use mediation. (34 C.F.R. § 300.510(a)(3).) If the parties agree to waive the resolution session, the 45-day timeline for a due process hearing begins the day after the waiver. (Id. at § 300.510(c)(1).)

District objected to the vacating of the dates in this matter because it did not need the additional time to respond to the amended complaint and wished to proceed to hearing.[1] District noted that the matter has been pending since January 30, 2018, and that the District may run into trouble obtaining the presence of District witnesses if the hearing is held over

[1] District did not state that it was willing to waive a resolution session on the amended complaint, although it appears likely that it is so willing.

the summer. Student has not agreed to waive the resolution period.[2] OAH may not waive or alter the resolution period. District may request mediation or otherwise seek continuance of the consolidated matter to avoid a summer hearing, but must show good cause for the request. The fact that a hearing is scheduled for the summer months is not in itself sufficient good cause for a continuance.

The motion to amend is timely and is granted. The amended complaint shall be deemed filed on the date of this order. All applicable timelines shall be reset as of the date of this order. Given the age of this matter, further requests to amend or continue the action will be balanced against the need to achieve a resolution without undue delay. OAH will issue a scheduling order with the new dates.

IT IS SO ORDERED.

DATE: May 25, 2018

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Chris Butchko
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CHRIS BUTCHKO
Administrative Law Judge
Office of Administrative Hearings

[2] On May 24, 2018, Student filed a Reply to District's Statement of Non-Opposition. Although Reply briefing is not properly part of motion practice before OAH, the Reply is noted to say that Student "fully intends on working cooperatively" with District if it encounters difficulty in obtaining the attendance of its witnesses at the dates set by OAH for hearing in this matter.