BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

FREMONT UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2020020631

ORDER DENYING MOTION TO AMEND COMPLAINT

JUNE 22, 2020

On February 18, 2020, Student filed a Due Process Hearing Request, referred to as a complaint, with the Office of Administrative Hearings, naming Fremont Unified School District. The Office of Administrative Hearings is referred to as OAH.

A prehearing conference was held on June 15, 2020. All then pending motions were heard and resolved or reserved for further action at that time as stated in the prehearing conference order. The hearing is set for June 23, 2020.

Student filed an Amended Due Process Hearing Request, which OAH considers a Motion to Amend the Due Process Hearing Request and an amended complaint after close of business on June 18, 2020. Motions received after the close of business are

deemed filed the next day. Accordingly, the Motion to Amend was filed on June 19, 2020. No opposition was received from Fremont.

An amended complaint may be filed when the other party consents in writing and is given the opportunity to resolve the complaint through a resolution session, or when the hearing officer grants permission. The hearing officer may grant permission at any time more than five days before 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).)

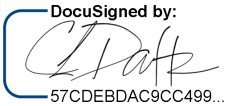
The parties argued a number of then pending motions during the PHC on June 15, 2020. The order states that any motion not filed three days before the prehearing conference must be supported by a declaration under penalty of perjury establishing good cause why the motion was not timely filed. The motion to amend was not supported by a declaration under penalty of perjury establishing good cause why the motion was not filed three business days before the prehearing conference.

The statute gives the hearing officer discretion to grant permission to file an amended complaint any time "more than five days before" the hearing. The statute does not give a party a right to file an amended complaint if the party files it five days before the hearing.

Here, a prehearing conference was held on May 8, 2020. OAH granted Student's request for a continuance at the prehearing conference to allow time for Student to file an amended complaint. The May 8, 2020 Order set the prehearing conference on June 8, 2020 and required all prehearing motions to be filed three business days before the prehearing conference.

Student's motion to amend did not comply with the May 8, 2020 Order and did not comply with the June 17, 2020 Order. The parties have engaged in extensive time consuming and expensive litigation over a number of subpoenas for testimony and supboenas duces tecum, in preparation for the hearing beginning June 23, 2020. Even if Student's motion were timely, granting Student's motion to amend at this late date would be prejudicial to Fremont and not in the interests of justice or judicial economy. Denying the motion to amend is not prejudicial to Student as there is no requirement that Student must bring all claims in the same action. Therefore, the motion to amend is denied. All dates shall remain on calendar.

IT IS SO ORDERED.

DocuSigned by:

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Cole Dalton

Administrative Law Judge

Office of Administrative Hearings