

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

OAKLAND UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2013060472

ORDER GRANTING MOTION TO
AMEND COMPLAINT

On June 10, 2013, Student filed a Due Process Hearing Request (complaint), naming Oakland Unified School District (District). The parties subsequently continued the dates set for prehearing conference (PHC) and hearing. The telephonic PHC was held on October 28, 2013, and at the PHC, Student's attorney indicated that he might be filing an amended complaint. On October 29, 2013, Student filed a motion to amend the complaint, attaching a copy of the proposed amended complaint. The due process hearing is set to begin on November 5, 2013. On October 31, 2013, the District filed an opposition, and on November 1, 2013, Student filed a reply to District's opposition.

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).)

DISCUSSION

The District raises several objections to the Office of Administrative Hearings (OAH) allowing Student to file an amended complaint. First, the District questions assertions of Student's attorney that the amended complaint is necessary, because he had not received all of Student's school records until October 25, 2013, and upon his review of these records, determined that the complaint must be amended. Failure of the District to provide Student

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

with educational records upon request is one of the issues Student is asking OAH to adjudicate. This issue must be determined by the taking of evidence through testimony and documents admitted into evidence. The undersigned Administrative Law Judge (ALJ) therefore is unwilling to consider this argument in the District's opposition.

Another ground raised in the District's opposition is that the amended complaint does not raise new issues that Student could not have known about when his original complaint was filed. The undersigned ALJ has reviewed both the amended complaint and the original complaint and finds they are different. For example, Student now asserts that he requires several more assessments than originally requested in the original complaint. Certainly this may be related to the dispute over the provision of Student's records to his attorney, but again, this will not be considered, and is not a ground for refusing to grant Student's motion to amend. It is not very unusual for an amended complaint to be filed by a party when the party discovers shortcomings in the drafting of an original complaint. Therefore, this reason cited by the District does not support a denial of Student's motion to amend.

The District also criticizes Student's attorney because he has not delineated in his motion to amend the complaint, what changes he has made in the amended complaint. However, this is not a requirement for a motion to amend.

Further, the District claims that Student's attorney should have filed one or more declarations in support of his motion to amend that explain why the motion was filed after the PHC. However, the order after PHC reflects the ALJ's knowledge that Student might be filing a motion to amend the complaint, and orders a sworn declaration be provided only for any other prehearing motion filed by a party.

In addition, the District contends that Student's motion to amend is untimely, because it will be less than five days prior to hearing when OAH grants the motion. However, OAH determines the timeliness of the motion based on the date of filing. This is because a party has three days to file a response to a motion to amend, and a party can simply delay filing a response until after the five-day time period has expired, as happened in this case, thus making the motion untimely. The District cites an order by another ALJ in another matter to support its contention that the motion to amend the complaint is not timely because the due process hearing date is now set to begin less than five days after this order granting Student's motion to amend. However, OAH orders and decisions are not precedential. (Cal. Code Regs., tit. 5, § 3085.) Student cites later OAH orders that have declined to follow this argument by the District.

Finally, the District argues that it will be prejudiced if the motion is granted because it has expended time and resources preparing for a due process hearing that by necessity will be continued if the motion is granted. While that is true, Student's right to go to hearing with a complete complaint supersedes any prejudice to the District.

The motion to amend is timely and is granted. The amended complaint shall be deemed filed on October 29, 2013. All applicable timelines shall be reset as of the date of that date. OAH will issue a scheduling order with the new dates.

IT IS SO ORDERED.

Dated: November 1, 2013

/s/

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings