

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT

v.

ROSEDALE UNION SCHOOL DISTRICT.
OAH CASE NUMBER 2021070676

ORDER GRANTING MOTION TO AMEND COMPLAINT

SEPTEMBER 13, 2021

On July 21, 2021, Student filed a Due Process Hearing Request, referred to as a complaint, with the Office of Administrative Hearings, naming Rosedale Union School District. The Office of Administrative Hearings is referred to as OAH. On September 3, 2021, Student filed a Motion to Amend the Due Process Hearing Request and an amended complaint. Rosedale Union School District filed an opposition on September 7, 2021. Although reply briefing is not permitted on motions before OAH, Student filed a reply brief in support of her motion on September 8, 2021.

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 motion to amend was filed more than five days prior to the due process hearing. Therefore, it is timely. Rosedale opposes the motion on three grounds. First, Rosedale argues that the new causes of action Student seeks to add cannot be adjudicated before OAH, making amendment futile. If amendment were to be granted, Rosedale argues, OAH should simultaneously dismiss those causes of action and corresponding elements of relief which OAH may not grant under the Individuals with Disabilities Education Act of 2004, known as the IDEA. Student noted in her motion that the addition of these claims was "necessary for the exhaustion of administrative remedies." Accordingly, the claims are appropriate for pleading before OAH even though they cannot be adjudicated by OAH.

In her reply briefing filed in response to Rosedale's opposition, Student agrees that the claims seeking relief outside of the IDEA and OAH's jurisdiction should be dismissed. No motion to dismiss is pending, however, and it is unclear whether allowing amendment and immediately dismissing the added claims would be procedurally sufficient to administratively exhaust the claims. For that reason, OAH declines to dismiss the added claims until a properly noticed motion or joint stipulation is filed.

Secondly, Rosedale objects that the causes of action that Student seeks to add here could have been pled earlier, and Student does not explain why she did not do so. However, Rosedale does not establish any prejudice in granting the motion to amend, especially as this case was only filed on July 21, 2021.

Lastly, Rosedale argues that allowing amendment will delay the resolution of this matter and points to conflicting statements in Student's motion about whether a

continuance request is part of the motion. Although the notice of motion seeks only amendment, the supporting memorandum asks at one point that OAH "grant her Motion to File First Amended Complaint and vacate all presently scheduled hearing dates in accordance with 20 U.S.C. § 1415 (c)(2)(E)(ii)" and then immediately afterwards states that she "does not wish to change the hearing dates and requests to keep the October 26-28, 2021 hearing dates."

This matter was previously continued on August 5, 2021, at the joint request of the parties so that a mediation could be held. If Student was seeking a second continuance now, she would need to make a showing of good cause. Student has not done so, as the motion specifically requested keeping the October 26 through 28, 2021 hearing dates. It appears more likely that no continuance was sought, and the language to the contrary was retained in error. This is confirmed by the reply brief Student filed, which clarified that no continuance was requested. Accordingly, there will be no delay, and there is no reason to deny the request to amend.

The request to amend is granted. The amended complaint shall be deemed filed on the date of this order. The decision timeline in the matter is reset and the prehearing conference and hearing dates in the August 5, 2021 Order granting the parties' continuance request remain on calendar. The prehearing conference in this matter will

be held on October 15, 2021, at 1:00 PM, and the due process hearing will take place on October 26 through 28, 2021.

IT IS SO ORDERED.

Chris Butchko

Chris Butchko

Administrative Law Judge

Office of Administrative Hearings