

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

GROSSMONT UNION HIGH SCHOOL DISTRICT, SAN DIEGO
COUNTY OFFICE OF EDUCATION, AND SAN DIEGO UNIFIED
SCHOOL DISTRICT.

OAH CASE NUMBER 2021060238

ORDER GRANTING MOTION TO AMEND COMPLAINT

OCTOBER 22, 2021

On June 3, 2021, Student filed a Due Process Hearing Request, referred to as a complaint, with the Office of Administrative Hearings, naming Grossmont Union High School District, San Diego Unified School District and San Diego County Office of Education. The Office of Administrative Hearings is referred to as OAH.

On June 15, 2021, the complaint was found insufficiently pled against San Diego Office of Education. Student was given 14 days to amend the complaint. The order determining the complaint insufficiently pled against the San Diego County Office of Education stated that, absent an amended complaint being filed within the 14 days

allowed the complaint would be dismissed as to the San Diego County Office of Education. On June 30, 2021, no amended complaint having been filed with OAH, the complaint as to the San Diego County Office of Education was dismissed. The complaint was not dismissed with prejudice. It was dismissed because it was insufficiently pled.

On October 18, 2021, Student filed a Motion to Amend the Due Process Hearing Request and an amended complaint naming San Diego Unified and Grossmont and again naming the San Diego County Office of Education. San Diego County Office of Education filed an opposition to the motion to amend on October 20, 2021, on the grounds that the case against it had been previously dismissed. No opposition to the motion to amend was received from either Grossmont or San Diego Unified.

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).)

When a claim against a party is dismissed for the failure to file a sufficient complaint, such a dismissal does not prohibit a Student from refiling claims that fall within the statute of limitations. The IDEA authorizes petitioners to file separate due process hearing complaints as to separate issues. (20 U.S.C. 1415(o); *M.M. v. Lafayette School Dist.* (9th Cir. 2012) 681 F.3d 1082, 1090.) Here, Student seeks the opportunity to file a new complaint against the respondents in this matter, including, the San Diego County Office of Education.

The motion to amend was filed more than five days prior to the due process hearing. Therefore, it is timely and is granted. The amended complaint shall be deemed filed on the date of this order. All previously scheduled dates in this matter are hereby vacated and all applicable timelines shall be reset as of the date of this order. OAH will issue a scheduling order with the new dates.

IT IS SO ORDERED.

Penelope S. Pahl

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Administrative Law Judge

Office of Administrative Hearings