

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

IN THE MATTER OF:  
PARENTS ON BEHALF OF STUDENT,

v.

ENTERPRISE ELEMENTARY SCHOOL DISTRICT.

OAH CASE NUMBER 2021080836

ORDER DENYING MOTION TO AMEND COMPLAINT

NOVEMBER 24, 2021

On August 27, 2021, Student filed a Due Process Hearing Request, referred to as a complaint, with the Office of Administrative Hearings, naming the Enterprise Elementary School District. The Office of Administrative Hearings is referred to as OAH. On October 8, 2021, Student filed an amended complaint. A prehearing conference was held on November 15, 2021, and the matter was set for hearing beginning on November 30, 2021.

On November 23, 2021, Student filed a motion for leave to file a second amended complaint, and a proposed second amended complaint. On November 24, 2021, Enterprise filed an opposition to the motion.

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).)

While it is true that leave to amend should in general be freely granted, the tribunal retains discretion to deny it in an appropriate case. This is such a case. First, the motion is untimely. It was filed after the prehearing conference and on the Tuesday before the Thanksgiving holiday, which was only three business days before the hearing. The Order Following Prehearing Conference provides: "Any motion that was not filed three business days before the PHC, shall be supported by a declaration under penalty of perjury establishing good cause why the motion was not timely filed." Student's motion ignores that requirement and fails to show cause why the motion is so tardy.

Second, the proposed second amended complaint would add nothing of significance to the issues in this matter. Student proposes two additions to her claim. Her first amended complaint already alleges that Enterprise failed to conduct a legally compliant assistive technology assessment. Her second amended complaint proposes to add a claim that Enterprise instructed its assistive technology assessor not to include in the assessment the finding that Student lacked the ability to use assistive technology independently. That is an evidentiary claim that is subsumed in the larger issue already pled that the assessment was not legally compliant. It does not need to be restated in another complaint.

Student's second proposed change to the first amended complaint is to allege that Enterprise violated the Americans With Disabilities Act, the Rehabilitation Act of 1973, and civil rights statutes. OAH has no jurisdiction over those claims.

Student's attorney claims in her declaration that she cannot begin the hearing on November 30, 2021, because she is involved in a hearing in an earlier-filed matters before OAH which will conflict with the starting date of the hearing in this matter. She also asserts that the parties have been discussing a possible continuance. Those matters are irrelevant to amending a complaint. If Student has good grounds to seek a continuance of the hearing, she should do so.

## ORDER

Student's motion for leave to file a second amended complaint is denied.

*Charles Marson*

Charles Marson

Administrative Law Judge

Office of Administrative Hearings