BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017040001
v.	ORDER DENYING MOTION TO AMEND COMPLAINT; ORDER TO SHOW CAUSE SANCTIONS
DESERT SANDS UNIFIED SCHOOL DISTRICT.	

On March 28, 2017, Student filed a Due Process Hearing Request (complaint) with the Office of Administrative Hearings, naming Deserts Sands Unified School District. On May 15, 2017, the parties participated in prehearing conference, in which Student's counsel indicated that Student would file a motion to amend the complaint. The parties have also indicated to OAH staff that they would be filing a continuance request as this matter has not been continued. The matter is scheduled to commence on May 23, 2016, and OAH scheduled a mediation for Friday, May 26, 2017, based on the assumption that the parties would continue this matter.

Motion to Amend

On May 19, 2017, Student filed a Motion to Amend the Due Process Hearing Request (amended complaint). No opposition was received from District.

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).) The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. §1415(c)(2)(E)(ii).) Student's motion to amend the complaint is not timely because the due process hearing date is set within five days from the date the motion to amend was filed with OAH.

Order to Show Cause

Under certain circumstances, an administrative law judge presiding over a special education proceeding is authorized to shift expenses from one party to another, or to OAH. (Gov. Code, §§ 11405.80, 11455.30; Cal. Code. Regs., tit. 5, § 3088; see *Wyner ex rel. Wyner v. Manhattan Beach Unified School Dist.* (9th Cir. 2000) 223 F.3d 1026, 1029 ["Clearly, [California Code of Regulations] § 3088 allows a hearing officer to control the

proceedings, similar to a trial judge."].) A party may be order to pay expenses of a party, or OAH as a result of "bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay. . . . " (Cal. Code Regs. tit. 5, § 3088, subd. (a).) A party may also be ordered to pay costs for failure or refusal, without substantial justification, to comply with an order of the presiding officer. (Govt. Code § 11455.10.) Only the ALJ presiding at the hearing may place expenses at issue. (Cal. Code. Regs., tit. 5, § 3088, subd. (b).)

Student's counsel's last minute filing of the motion to amend appears merely to be a continuance request, when Student's counsel simply could have requested a continuance. Further, Student's counsel offered no explanation why the motion to amend was not filed soon after the PHC to be timely. Therefore, Student is ordered to show cause why Student's counsel should not be required to pay OAH's costs in preparing this order denying the motion to amend, granting the May 26, 2017 mediation and hearing preparation costs. **Student is ordered to file a written response with OAH by no later than 5:00 p.m. on May 25, 2017**. A copy of the response shall be served upon District. District is not expected to file a written response.

Student's response shall address why Student's legal counsel did not request a continuance after OAH granted a mediation date after the hearing was scheduled to commence, and why the motion to amend was not filed sooner. **Student's written response shall address why OAH should not order Student to pay OAH's expenses in preparing this order denying the motion to amend, granting the May 26, 2017 mediation, hearing preparation costs, and for this order to show cause.**

The order to show cause hearing shall take place telephonically on June 2, 2017, at 11:00 a.m. Failure of Student's representative to appear telephonically at the order to show cause hearing on June 2, 2017, may result in additional sanctions.

ORDER

1. Therefore, the motion to amend is denied. All previously set dates shall remain on calendar, except that the hearing date of May 23, 2017, is vacated, and the hearing will commence on May 24, 2017.

2. The mediation scheduled for May 26, 2017, and OAH will not grant the parties any mediation for Friday regarding this dispute.

3. An Order to Show Cause as to Why Student Should be Ordered to Pay Expenses is hereby issued. Student must file a response no later than 5:00 p.m. on Thursday, May 25, 2017.

4. A telephonic order to show cause hearing shall be convened at 11:00 a.m. on Friday, June 2, 2017.

DATE: May 22, 2017

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Peter Paul Castillo
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PETER PAUL CASTILLO
Presiding Administrative Law Judge
Office of Administrative Hearings