BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

COMPTON UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2019101110

ORDER DENYING MOTION TO AMEND COMPLAINT

AUGUST 18, 2020

On October 28, 2019, Student filed a Due Process Hearing Request, referred to as a complaint, with the Office of Administrative Hearings, naming Compton Unified School District. The Office of Administrative Hearings is referred to as OAH. On October 17, 2020, Student filed a Motion to Amend the Due Process Hearing Request, with a proposed amended complaint. OAH informed the parties that the motion to amend would be ruled upon at the beginning of the hearing, which was scheduled for the next day, August 18, 2020.

The first day of hearing convened on August 18, 2020. Attorneys Jenn Chau and Rosa K. Hirji appeared on behalf of Student; Student's Parent was present. Attorney Ian Wade appeared on behalf of Compton, along with Compton's representative, Helen

Rodriguez, M.D. Before any documentary or testimonial evidence was presented, ALJ Woosley and the parties addressed Student's motion to amend.

Student sought to add a fifth issue to the complaint, which related to a functional behavior assessment of Student that Compton allegedly completed in February 2018. Parent and Student's counsel were allegedly unaware of the assessment having been completed because Compton had not produced a functional behavior assessment report in response to Student's multiple requests for records. Parent and Student's attorney did not learn about the functional behavior support assessment's alleged completion until August 15, 2020, when talking to a former Compton employee and probable witness. Therefore, Student sought to amend the Complaint, adding a fifth issue claiming that Student was denied a FAPE because Compton's withholding of the assessment prevented Parent from participating in Student's special education decision-making process. Student further asked that the fifth issue relate back to the October 2019 filing of the original complaint and that the hearing proceed as scheduled on August 18, 2020.

Compton opposed the amendment request, arguing that the proposed amended complaint included allegations that substantively expanded the scope of the hearing, for which Compton had prepared. Compton further contended that the proposed additional issue included a statute of limitations question, which Student was trying to avoid by having the new issue relate back to the October 2019 filing.

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)(i).)

Here, Student's motion to amend was made less than five days before the hearing. Therefore, absent stipulation of both parties, the ALJ is not empowered to grant the motion. Further, even if the ALJ was authorized to grant the motion, the timeline must be reset and Compton must be given the meeting opportunity pursuant to subsection (f)(1)(B). (20 U.S.C. §§1415(c)(2)(E)(i)(I) and(E)(ii).) The hearing would have to be continued and OAH would be required to issue a new scheduling order, again delaying the hearing in a matter that was filed 10 months ago.

Therefore, the motion to amend is denied. All dates shall remain on calendar.

IT IS SO ORDERED.

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Clifford H. Woosley

Administrative Law Judge

Office of Administrative Hearings