

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011030597

ORDER DENYING MOTION TO
AMEND COMPLAINT AND MOTION
FOR A CONTINUANCE

On March 10, 2011, Student filed a Due Process Hearing Request (complaint), naming Los Angeles Unified School District (District) as the respondent. On March 11, 2011, OAH issued a scheduling order setting a prehearing conference for April 27, 2011 and a hearing on May 4, 2011. The prehearing conference went forward as scheduled on April 27, 2011. Proposed expert witness Peggy Burns was not listed as a witness in Student's prehearing conference statement. At the prehearing conference, Student's counsel represented that Student was considering filing a motion to amend the complaint. Student's counsel did not state that any other motions were contemplated. At the prehearing conference, Student's counsel did not raise any issue that association of additional counsel was necessary. The prehearing conference order added an additional hearing date and advised the parties that any additional motions must be supported by a declaration under penalty of perjury providing an explanation as to why the motion was not made at the prehearing conference.

Following the prehearing conference, Student filed a Motion to Amend the complaint to add civil rights claim related to the resolution session, a Motion for a Continuance, and a Notice that another law firm would be associate in as Student's counsel. On May 2, 2011, District filed an opposition to both motions. District opposed the Motion for a Continuance on the grounds that Student's counsel is responsible for any delay in not securing an expert witness on the dates for hearing, that association of counsel is not good cause for a continuance, that Student did not follow OAH procedures, and that District was prepared for hearing and would be prejudiced by delay. District opposed the Motion to Amend on the grounds that any order granting amendment would fall within five days of the hearing, that the amendment as to prior school years is not substantive, that any amendment as to the 2011-2012 school year is premature, that Student is not prohibited from changing the remedies sought at hearing even if the amendment is not granted, and that "Problem Two" is outside OAH jurisdiction.

For the reasons set forth below, the Motion to Amend and the Motion for a Continuance are both denied.

Motion to Amend

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).)¹ The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. §1415(c)(2)(E)(ii).)

Here, as an initial matter, District is correct that the timing of Student's Motion to Amend makes granting the motion within five days of the date of hearing impossible. As the experienced law firms that represent Student are aware, parties before OAH have three days to file an opposition to a pre-hearing motion. Here, Student's Motion to Amend was filed *after* the prehearing conference on April 27, 2011, seven days before hearing. Because District was entitled to three days to respond to the motion, as of May 2, 2011, less than five days remain prior to hearing. Accordingly, the motion is denied as untimely.

The motion is denied on the merits as well. Student's Motion to Amend states that the reason for the amendment is that "Petitioner's experience during the resolution session resulted [sic] indicated to his parent that the due process case may actually involve larger issues of discrimination than previously realized."

As to Issue One, the attached proposed amendment complaint would add facts and better articulate the legal issues that are already included in the existing complaint. For example, amending to include the 2011-2012 school year is a non-substantive change because the IEP already at issue is an annual IEP that will be ineffect at the beginning of the 2011-2012 school year. Similarly, although not broken out into subdivided numbered paragraphs like in the proposed amendment, Student's claims include a failure to implement claim, a lack of parental participation at the IEP claim, and a failure to make an appropriate offer claim. The only new claim the ALJ could identify was a predetermination claim, which, given the late request for an amendment and the articulated reason for the amendment to address "larger issues of discrimination" does not justify an amendment. Student is free to file that claim separately. Thus, as to Issue One, amendment is unnecessary this close to the scheduled hearing date.

As to Issue Two, it squarely alleges the type of civil rights issues mentioned in the motion as the reason why amendment was being requested. Student is alleging all possible types of discrimination claims, none of which is within OAH's jurisdiction in an IDEA due process hearing. Accordingly, amendment to add claims outside OAH jurisdiction is denied.

¹ All statutory citations are to Title 20 United States Code unless otherwise indicated.

Finally, the proposed amended complaint either slightly changes some of the requested remedies or seeks relief such as injunctions or money damages that are outside OAH jurisdiction. An amendment is unnecessary on this ground as well. Student is free to argue for different remedies than those requested in the original complaint based on the evidence at hearing. As to the requests for money damages and “systemic relief” that are outside OAH jurisdiction, there is no need to amend just to have such requests dismissed for lack of jurisdiction. In sum, not only is the Motion to Amend untimely, Student has not demonstrated why it should be granted.

Motion for a Continuance

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted for good cause. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) In ruling upon a motion for continuance, OAH is guided by the provisions found within the Administrative Procedure Act and the California Rules of Court that concern motions to continue. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, rule 3.1332 .) Generally, continuances of matters are disfavored. (Cal. Rules of Court, rule 3.1332(c).)

Here, Student has not presented good cause for a continuance. The fact that Student wants to present expert testimony from an out-of-state witness who is not available on the current hearing dates is not good cause to continue the entire hearing. Student has already been granted permission to call that witness at hearing and the ALJ hearing the matter can set an additional day of hearing on a convenient date to obtain that testimony either live or telephonically.

The addition of another highly experienced special education law firm is also not good cause for a continuance, particular when Student had notice of the hearing date as of March 11, 2011. Both firms involved in this matter are highly specialized special education firms with years of experience representing Students. Given the expertise of the firms involved, and the fact that there is nothing unusual or complex about the issues alleged, it is not plausible that such firms would be unable to conduct the hearing on the dates already established.

ORDER

1. Student's Motion to Amend is denied.

2. Student's Motion to Continue is denied; however, the ALJ at hearing shall add an additional hearing date to take the testimony of Student's expert witness Peggy Burns if the hearing ALJ determines that such testimony is relevant and admissible.

Dated: May 2, 2011

/s/

RICHARD T. BREEN
Presiding Administrative Law Judge (acting)
Office of Administrative Hearings