

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

REDWOOD CITY ELEMENTARY
SCHOOL DISTRICT.

OAH CASE NO. 2012051055

ORDER DENYING MOTION TO
AMEND COMPLAINT

On May 24, 2012, Student, through attorney Michael Zatopa, filed a Due Process Hearing Request (complaint) with the Office of Administrative Hearings (OAH) against the Redwood City Elementary School District (District). On September 6, 2012, Student's former counsel, Mr. Zatopa, sent OAH a withdrawal of Student's complaint, and OAH dismissed Student's complaint the same day.

On September 11, 2012, Parents sent OAH a letter, which was not served on the District, stating that Parents were obtaining new counsel, and advising OAH that Student's complaint had been withdrawn without Parents' knowledge or permission. The same day, OAH received attorney Christian M. Knox's notice of representation of Student. On September 12, 2012, OAH issued an order re-setting the prehearing conference and hearing.¹

On December 28, 2012, Student filed a Motion to Amend the Due Process Hearing Request (amended complaint) to include new allegations that occurred after the filing of the original complaint. On January 2, 2013, the District filed an opposition that contended that Student's request was prejudicial to the District as the request was filed a couple of weeks before the scheduled hearing on January 14, 2013.

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.

¹ On September 27, 2012, the District filed a motion to dismiss Student's complaint with prejudice, contending that there was a signed settlement agreement between the parties. On October 8, 2012, OAH denied the District's motion, and the District's attempt to reargue its position is untimely.

§1415(c)(2)(E)(i).² 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, the motion to amend the complaint is timely because the due process hearing date is set more than five days from the date the motion to amend was filed, the District appropriately notes that the motion does not explain why it was not filed sooner. The only two changes of substance between the proposed amended complaint and the original complaint is the District's purported failure to hold an annual individualized educational program (IEP) team meeting in October 2012, and December 20, 2012 parental notice to the District that Student was changing unilateral private placements. Student provided no explanation why the complaint was not amended sooner after the District's purported failure in October 2012 to hold an annual IEP team meeting or why the change in unilateral placements must be heard in this matter that has been pending since May 24, 2012. Therefore, the motion to amend is denied. All previously set dates shall remain on calendar.

IT IS SO ORDERED.

Dated: January 3, 2013

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings

² All statutory citations are to title 20 United States Code unless otherwise indicated.