

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

OAH CASE NO. 2012110608

v.

FRESNO UNIFIED SCHOOL DISTRICT,

FRESNO UNIFIED SCHOOL DISTRICT,

OAH CASE NO. 2012110688.

v.

PARENT ON BEHALF OF STUDENT.

ORDER DENYING MOTION TO
AMEND COMPLAINT WITHOUT
PREJUDICE

On November 16, 2012, Parent on behalf of Student filed a request for a due process hearing (complaint) naming Fresno Unified School District (District). On January 16, 2013, a telephonic prehearing conference (PHC) was held before the undersigned Administrative Law Judge (ALJ), at which counsel for both Student and District appeared. On January 24, 2013, Student filed an amended complaint, deemed to be a motion to amend his complaint. District filed an opposition on January 25, 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. §1415(c)(2)(E)(i).) The filing of an amended complaint restarts the applicable timelines for the due process hearing unless waived by both parties. (20 U.S.C. §1415(c)(2)(E)(ii).)

The granting of a motion to amend is discretionary. Counsel for Student did not file a motion to amend which would have provided notice to District and OAH of the nature of the proposed changes to Student's complaint, and is admonished to do so in future cases. The motion should generally identify what factual allegations, issues, and/or proposed resolutions were changed or added, for example, to facilitate the administrative law judge's evaluation of the motion, particularly where a party opposes the motion. Here, without searching and comparing the original complaint (21 pages) and the proposed amended complaint (18 pages), the exact amendments are unknown (except for Student's withdrawal of certain issues at the PHC). However, since the pleading is deemed to be a motion to amend, District's objection that no motion was filed is overruled.

The due process hearing is set for four days beginning on February 5, 2012. The motion was made more than five days before the hearing and is therefore timely. However, District objects that Student did not file a declaration under penalty of perjury in support of the motion. In the PHC Order dated January 17, 2013, at paragraph 9, page 5, the ALJ ordered that “any motion filed after this date shall be supported by a declaration under penalty of perjury establishing good cause as to why the motion was not made prior to or during this PHC.” This requirement supports the parties’ orderly preparation for hearing by requiring last-minute requests for changes to be supported and screened. While the moving party may have the right to request to amend the complaint, the law otherwise mandates a speedy resolution of the due process hearing and continuance of the hearing may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f)(3).)

During the PHC, Student mentioned the possibility of asking to amend his complaint depending on the results of a recent evaluation which had not been received by his attorney prior to the PHC. The amended complaint now refers to that evaluation, done in December 2012 by Dr. James Murphy, and adds a new issue based on it. However, because Student’s attorney mentioned the possibility during the PHC does not now excuse her from filing the requisite declaration in support of the motion.

District also opposes the motion on the ground that Student seeks to add a cause of action he “withdrew” during the PHC, which is inaccurate. During the PHC, the ALJ determined that Student’s attempt to *add* an issue failed. The ALJ found Student’s claim that District failed to “have a statutorily compliant IEP in place at the beginning of the 2012-2013 school year” was not set forth in his complaint, and is not an issue in this case. Student’s proposed amended complaint now contains this new issue, again without a declaration under penalty of perjury. During the PHC, the ALJ asked if Student wanted to amend, and Student declined to make a motion. Since he now asks to add the issue, he should file the requisite declaration to make an adequate showing.

Based on the foregoing, Student’s motion to amend his complaint is denied without prejudice.

IT IS SO ORDERED.

Dated: January 28, 2013

/s/

DEIDRE L. JOHNSON
Administrative Law Judge
Office of Administrative Hearings