

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN DIEGO UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2016030717

ORDER DENYING STUDENT'S
MOTION TO ADD A PARTY AND
ORDER DENYING STUDENT'S
MOTION TO AMEND COMPLAINT,
WITHOUT PREJUDICE

On March 15, 2016, Student filed a Due Process Hearing Request with the Office of Administrative Hearings, naming San Diego Unified School District as the sole respondent, generally asserting that District's inflexible monetary limitations for independent educational evaluations denied Student a free appropriate public education. On April 13, 2016, Student filed a Motion to Add the San Diego Unified School District Special Education Local Plan Area as a party. District did not file a response.

Student asserts that the San Diego SELPA is a necessary party and cites Code of Civil Procedure, Section 389, subdivision (a), as authority for Student's request. Subdivision (a) thereof defines necessary party. Student asserts a number of facts in the motion to demonstrate that the SELPA falls within the code's definition.

Student's motion to add a party is denied because, generally, Code of Civil Procedure section 389 is inapplicable to the Individuals with Disabilities Education Act due process hearing. However, OAH considers a petitioner's motion to add a party as a motion to amend the complaint for the purpose of naming an additional respondent.

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).)

Education Code identifies two requirements for including an entity in a special education due process hearing. First, the entity must be a public agency "providing special education or related services." (Ed. Code, § 56500.) Second, it must be "involved in any decisions regarding a pupil." (Ed. Code, § 56501, subd. (a).)

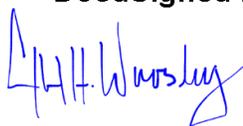
Here, the Student's motion contains additional factual allegations in support of the contention that the San Diego SELPA is a public agency that was involved in denying Student a FAPE. For example, Student asserts that San Diego SELPA is responsible for setting mandatory, inflexible monetary limits on District's payments for independent educational evaluations. Without such factual assertions, it is unclear how San Diego SELPA is allegedly a proper party to a due process proceeding, pursuant to the Education Code. Student must state these factual claims in a complaint, not within argument on a motion to add a party.

Accordingly, the motion to amend the complaint is denied, without prejudice. The Student's additional factual contentions regarding the San Diego SELPA need to be stated in an amended complaint.

ORDER

1. Student's Motion to Add a Party is denied.
2. Student's Motion of Amend Complaint is denied, without prejudice.

DATE: April 21, 2016

DocuSigned by:


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CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings