

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

JULIAN UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2012020570

ORDER DENYING MOTION TO
AMEND COMPLAINT

On February 06, 2012, Father, on behalf of Student, filed a Due Process Hearing Request (complaint), naming Julian Unified School District (District). On February 22, 2012, Father notified the Office of Administrative Hearings that attorney Patricia Lewis would be representing his interests in the due process hearing on behalf of Student. The parties stipulated to a request for continuance, which was granted on March 16, 2012, at which time OAH scheduled mediation for June 5, 2012, a prehearing conference for July 2, 2012, and the due process hearing for July 9, 10, and 11, 2012. On May 31, 2012, the mediation was rescheduled for June 14, 2012.

On June 4, 2012, Father filed a Motion for Leave to file a First Amended Complaint (amended complaint), along with declarations of Father and Ms. Lewis, memorandum of points and authorities, and nine (9) exhibits (primarily composed of Family Law Court orders). On June 8, 2012, District filed an opposition, including the declaration of its attorney Deborah R. G. Cesario and three (3) exhibits. On June 8, 2012, Father's attorney filed a short reply to the opposition.

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).)

DISCUSSION

Father states he requests leave to file an amended complaint to allege his rights and District's procedural violation of those rights, which denied a free appropriate public

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

education (FAPE) to Student. Generally, Father argues that he did not have counsel when he drafted and filed the initial complaint and, having since obtained representation, seeks to explicitly set forth the facts as to how the District's various procedural violations denied Student a FAPE. Father also summarizes his recent efforts in family court relative to his attempts to have Student observed for an evaluation, over the objection of his former wife, Student's Mother. The motion details the disputes between Father and Mother regarding the choice of school district, the placement and services, and the educational rights held by both parents.

District opposes the motion to amend, contending that the amended complaint does not include an additional school district (Spencer Valley) as a necessary party respondent, that the amended complaint is insufficient because it requests improper remedies (e.g., order changing school districts), that Father is merely seeking to delay and protract the litigation, that the entire due process proceeding is brought for an improper purpose, and that amendment is unnecessary. District's opposition also discusses various communications between the parties' attorneys, evidencing that District did not agree to amendment.

In determining whether a party should be allowed to file an amended complaint, the administrative law judge weighs whether the petitioner has provided good cause for filing the amendment. District's contention that the proposed amended complaint fails to include a necessary party is not a basis for denying amendment. Federal and state education law empowers the petitioner to choose the agency against whom to pursue due process. A named respondent's assertion that another agency was responsible for alleged failures would be a defense, not a basis for denying a motion to amend. District's assertion that the proposed amended complaint seeks improper remedies is not a basis for denying amendment; District may file a notice of insufficiency, a motion to dismiss, or raise as a defense at hearing that the remedies are improper. Also, District's claim that the motion and due process hearing request are brought for improper purposes does not address the fundamental issue of whether Student has shown good cause for amendment. Such assertions are more properly addressed at hearing.

However, the amended pleading is unnecessary. Father's attorney has drafted an amended complaint, which is more tightly structured and includes some additional specific factual allegations. However, the proposed amended complaint does not include additional issues for hearing. A comparison of the two pleadings demonstrates that the initial complaint adequately sets forth the issues asserted in the amended complaint. Though the amended complaint includes some additional alleged facts, these allegations are evidentiary in nature to the ultimate issues, which were adequately asserted in the original petition. The motion acknowledges this at page 10 of the memorandum of points and authorities:

“There are no substantive changes or additions to the FAC [first amended complaint] other than identifying the Father's rights and reiterating the District's continued and ongoing denials of those procedural rights. Allegations of Julian District's acts, and failure to act, are included as alleged in the complaint.”

Accordingly, Father has failed to demonstrate good cause for the filing of an amended complaint.

ORDER

1. The motion to amend is denied.
2. The dates set for mediation, prehearing conference, and due process hearing remain as scheduled.

Dated: June 13, 2012

/s/

CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings