

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

OAKLAND UNIFIED SCHOOL
DISTRICT AND ALAMEDA COUNTY
BEHAVIORAL HEALTH CARE
SERVICES

OAH CASE NO. 2012040848

ORDER DENYING LEAVE TO
AMEND COMPLAINT AND
CONFIRMING PREHEARING
CONFERENCE AND HEARING
DATES

On April 19, 2012, Student filed with the Office of Administrative Hearings (OAH) a Due Process Hearing Request (complaint) naming the Oakland Unified School District (District) and the Alameda County Behavioral Health Care Services (County Mental Health).

On June 22, 2012, Student filed a Motion for leave to amend the complaint (Motion to Amend). The Motion to Amend did not contain a proposed amended complaint.¹ District filed an opposition to the Motion to Amend on June 25, 2012, that argued that it will be prejudice by a delay. County mental Health filed a joinder to District opposition on June 26, 2012.

On June 27, 2012, OAH issued an Order granting Student leave to amend her complaint. As amended by the Order Granting Motion for Reconsideration, dated July 2, 2012, the Order required Student to file her amended complaint on or before 5:00 p.m. on July 3, 2012. Student effectively filed her amended complaint on July 5, 2012, as Student filed the amended complaint with OAH after 5:00 p.m. on July 3, 2012.²

On August 16, 2012, Student filed a second Motion for leave to amend (Second Motion to Amend) her complaint. With the motion, Student included her Second Amended Request for Due process Hearing (Second Amended Complaint).

¹ Student indicated that the amended complaint would be filed subsequently.

² As July 4, 2012, was a holiday, Student complaint was deemed filed on the next business day, July 5, 2012.

On August 16, 2012, District filed an opposition to the Motion to Amend that argued that Student was merely delaying the due process hearing in this matter, as Student currently has stay put, and thus was attempting to delay the process for Student to continue to receive existing services for which she is no longer entitled. County Mental Health filed a joinder to District's opposition also on August 16, 2012.

APPLICABLE LAW AND DISCUSSION

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).)³ The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. §1415(c)(2)(E)(ii).)

It is true that that OAH may grant Student permission to amend her complaint, at any time more than five (5) days prior to the due process hearing. However, granting such permission is clearly within the discretion of the hearing officer, or the Administrative law judge (ALJ). The ALJ's discretion may not be exercised arbitrarily.

Student's Second Amended Complaint appears not proper. In the Second Amended Complaint, Student appears to add Issue Six relating to the 2011-2012 extended school year to the complaint. Student Issue Six states: "Did OUSD deny Student a FAPE during the 2011-2012 extended school year: a) failing to provide Student an appropriate residential treatment program?" Attorney for Student argues that Issue Six is being added to Student's complaint due to new developments in Student case, that is, Student's recent unilateral placement, on August 6, 2012, at Innercept, a residential treatment facility. Thus, she contends that the second amendment is warranted.

The purpose of the Second Amended Complaint is unclear. Issues relating to placement, offer of appropriate placement or appropriate residential placement was already part of Student's Case, and the period covered already included the 2011-2012 school year. Further, funding (or reimbursement) for the costs of Parent's unilateral placement of Student in residential placement facility was requested in Student's First Amended Complaint, filed on July 5, 2012. Thus, it is unclear whether Issue Six was added due to the specific mention of the "2011-2012 extended school year" as a period covered regarding the placement dispute. In any case, a review of the entire record establishes that issues regarding parties' ongoing placement disputes, including funding or reimbursement for the costs of unilateral placement, including residential placement, are not "new developments" in this matter. Student's two prior complaints have included arguments for both prospective residential placement and/or continuing placement in a residential treatment facility. As such, Student

³ All statutory citations are to title 20 United States Code unless otherwise indicated.

has failed to establish good cause why this/these issue(s) was/were not included in the First Amended Complaint.

Further, the attorney for Student has not shown enough diligence in this matter.⁴ Her preferences for waiting until the last minute before presenting her motions appear to be prejudicial to the respondents, especially since the issue of the District and County Mental Health not having available an appropriate residential placement after her discharge from TLC is included in the First Amended Complaint. Student may file a separate due process hearing request on an issue separate from a due process hearing request already filed if Student believe that her “2011-2012 extended school year” placement issue is outside her First Amended Complaint.⁵ Therefore, Student’s Second Motion to Amend her complaint must be denied.

ORDER

1. Student’s Motion to Amend her complaint is denied.
2. All dates currently set in this matter are confirmed.

Dated: August 20, 2012

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings

⁴ The due process hearing in this matter is currently set to begin on August 29, 2012, and the prehearing conference (PHC) is set for August 20, 2012. Regarding her First Amended Complaint, Student also waited until July 5, 2012 to file, while the PHC was set for July 11, and the due process hearing for July 16, 2012.

⁵ Education Code section 56509 provides that “this chapter, in accordance with subsection (o) of Section 1415 of Title 20 of the United States Code, does not preclude a parent from filing a separate due process hearing request on an issue separate from a due process hearing request already filed”.