

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. LAKESIDE UNION SCHOOL DISTRICT,	OAH CASE NO. 2012071004
LAKESIDE UNION SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2012050216 ORDER DENYING MOTION TO AMEND COMPLAINT AND DENYING DISTRICT'S MOTION TO DISMISS

The Lakeside Union High School District (District) filed with the Office of Administrative Hearings (OAH) a Due Process Hearing Request in OAH Case Number 2012050216 on May 4, 2012 naming Parent on behalf of Student (Student) as respondent. On July 30, 2012, Student filed her Due Process Hearing Request (complaint), naming the District as respondent. The complaint contains two issues. On July 30, 2012, Student filed a motion to consolidate the two cases which was granted by OAH on August 7, 2012.

On August 13, 2012, Student filed an amended complaint containing six issues without simultaneously filing a motion for leave to file an amended complaint. Since Student can not file an amended complaint without seeking wither OAH permission or by stipulation with the respondent, Student's filing of the amended complaint is deemed to be a motion for leave to file the amended complaint.

On August 14, 2012, the District filed a Motion to Dismiss, or in the alternative, a Notice of Insufficiency regarding the amended complaint. Because the District is contending that the amended complaint is not sufficient, District's Notice of Insufficiency (NOI) is hereby deemed an opposition to Student's request for leave to file the amended complaint.

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).)

The amended complaint contains six issues which are not detailed. The amended complaint also lacks the averment any facts whatsoever much less to support each of the issues alleged. For example, Issue One reads: “From December 7, 2011 through January 15, 2012, did the District deny Student a free appropriate public education (FAPE) by failing to meet its legal requirements in regard to Student’s December 7, 2011 request for an Independent Educational Evaluation (IEE)?” Student fails to allege any facts or to delineate in any manner what legal requirements that the District failed to meet.

Another example is Issue Three which states: “From January 16, 2012, through present, has the District denied Student a FAPE by failing to assess in all areas of suspected disability?” Student fails to allege what areas she is referring to and the facts to support the conclusory allegation. Thus, the District is not provided any information as to what is being alleged against it.

Because the alleged issues are vague and there are no alleged facts to support the issues, the District lacks sufficient information to respond to the amended complaint or be able to participate in a mediation. Thus, the motion for leave to file the amended complaint must be denied.

ORDER

1. Student’s motion for leave to file the amended complaint is DENIED.
2. The District’s Motion to Dismiss the amended complaint is denied as moot.
3. If Student desires to file a second amended complaint, it must file a motion for leave to file accompanied with the proposed amended complaint.

IT IS SO ORDERED.

Dated: August 17, 2012

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings

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

