

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

HAYWARD UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012090581

ORDER DENYING MOTION TO
AMEND COMPLAINT

On September 17, 2012, Student filed a Due Process Hearing Request (complaint), with the Office of Administrative Hearings (OAH), naming Hayward Unified School District (District) and Mid-Alameda County Special Education Local Plan Area (SELPA), as respondents. On October 3, 2012, SELPA filed a Motion for Dismissal of the SELPA as a party to Student's complaint. On October 9, 2012, Administrative Law Judge Judith Pasewark issued an Order granting SELPA's motion and dismissing SELPA as a party, finding that the complaint did not allege that the SELPA had any responsibility in determining and providing Student with a free appropriate public education (FAPE).

On October 12, 2012, Student's Parent filed an Amended Request for Due Process Hearing (amended complaint), which named both the District and the previously dismissed SELPA. OAH accepted and treated the filing as a motion for leave to file an amended complaint. On October 18, 2012, District filed written consent to the amended complaint's filing. On October 18, 2012, SELPA filed a written opposition, asserting the amended complaint was an attempt to bring SELPA back into the due process, even though the amended pleading failed to assert any facts that demonstrate SELPA was responsible for any decisions regarding a provision of FAPE for Student.

APPLICABLE LAW

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).)

Special education due process hearing procedures extend to the parent or guardian, to

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

the student in certain circumstances, and to “the public agency involved in any decisions regarding a pupil.” (Ed. Code, § 56501, subd. (a).) A “public agency” is defined as “a school district, county office of education, special education local plan area, . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs.” (Ed. Code, §§ 56500 and 56028.5.)

DISCUSSION

Student’s amended complaint again names SELPA, which had been dismissed as a respondent. The amended complaint adds two allegations relative to SELPA. The first is that the IEP form has “MID ALAMEDA COUNTY SELPA” printed at the top. Second, under the IEP’s “Offer of FAPE” page, the nonpublic agency (NPA) to be used for the related service of occupational therapy (OT) would be “under contract with SELPA or district.” These allegations attempt to address the basis of ALJ Pasewark’s prior dismissal of SELPA as a party.

They do not. The additional allegations do not assert that SELPA was a public agency involved in any decisions regarding Student’s education. The amended complaint identifies districts within the SELPA, including specific allegations as to District. However, the complaint fails to allege facts which support an allegation that SELPA was in any way responsible for providing a FAPE to Student.

The amended complaint only adds allegations relative to SELPA and, as discussed above, these additions do not provide any substantive changes to the original pleading. The proposed amended complaint fails to allege facts that demonstrate that the SELPA is a proper party. Accordingly, the amended complaint is not necessary or proper..

ORDER

1. The Student’s amended complaint is deemed a motion to file an amended complaint.
2. The motion to amend is denied in that Student has failed to demonstrate good cause for the filing of an amended due process complaint.
3. In accordance with the October 9, 2012 order, SELPA is dismissed and is not a proper party to the complaint.

Dated: October 19, 2012

/s/

CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings