

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

LEGAL GUARDIAN ON BEHALF OF
STUDENT,

v.

WASHINGTON UNIFIED SCHOOL
DISTRICT AND FRESNO COUNTY
OFFICE OF EDUCATION (SELPA).

OAH CASE NO. 2013030656

ORDER PROVIDING 10-DAY
EXTENSION OF TIME TO FILE
AMENDED COMPLAINT

On March 28, 2013, Student, through her Grandmother, who is her legal guardian (referred to jointly here as “Student”), filed a request for a 30-day extension of time within which to file an amended due process request, indicating that Student was seeking an attorney. Student also filed a request for appointment of a mediator to assist in the filing of the amended complaint.

Background

On March 15, 2013, filed a Due Process Hearing Request¹ (complaint) naming some 13 individuals who were alleged to be employed by the Washington Unified School District² (District) or the Fresno County Special Education Local Plan Area. The complaint filed with the Office of Administrative Hearings (OAH) was 304 pages.

On March 19, 2013, the District timely filed a Notice of Insufficiency (NOI) as to Student’s complaint. On March 21, 2013, Administrative Law Judge (ALJ) Darrell Lepkowsky issued an order determining that the complaint was insufficiently pled pursuant to section Title 20 United States Code 1415(c)(2)(D) because it failed to provide the District with a concise statement of the issues in a coherent manner. ALJ Lepkowsky found that it was impossible to determine what parts of the complaint’s many pages of documentation were meant to be part of the complaint and which parts were supporting documentation. It was difficult to determine if Student was attempting to allege that the District failed to

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under Title 20 United States Code section 1415(b)(7)(A).

² Student incorrectly identified the District as the Washington Union High School District.

implement her IEP, had failed to implement the settlement agreement, or both. ALJ Lepkowsky also determined that Student's resolutions were equally unclear.

Having found Student's complaint was statutorily insufficient, ALJ Lepkowsky granted Student 14 days within which to file an amended due process complaint that complied with the requirements of Title 20 United States Code section 1415(b)(7)(A)(ii). If Student timely files an amended complaint, OAH would issue a new scheduling order setting the matter for mediation, a prehearing conference (PHC), and hearing.

Moreover, the March 21, 2013 order noted that a parent not represented by an attorney may request that OAH provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint, pursuant to Education Code section 56505. ALJ Lepkowsky encouraged Student's legal guardian to contact OAH for assistance if she intends on amending the due process hearing request.

Student's legal guardian requested appointment of a mediator on March 28, 2013. On April 2, 2013, OAH assigned ALJ Candance Faunce, pro tem, to provide mediator assistance to Student.

Discussion

When a complaint is deemed to be insufficiently pled pursuant to section Title 20 United States Code 1415(c)(2)(D), OAH may provide an opportunity for the student to amend. However, all scheduled dates are vacated because there is no operative complaint on file, enabling the due process matter to proceed. OAH typically allows two weeks (14) days for a petitioner to file an amended complaint after granting an NOI. If the due process complaint is dismissed because an amended complaint is not timely filed, such dismissal does not prevent a student from filing a new due process request.

Here, Student requests a 30-day extension within which to file an amended pleading because she is seeking an attorney. This is not a reason to grant an extension to amend. However, Student also requested assistance of a mediator, pursuant to Education Code section 56505, which was encouraged by ALJ Lepkowsky in her March 21, 2013 order. OAH appointed the mediator.

Accordingly, a short extension of time is appropriate to enable the mediator to assist the Student's legal guardian, as contemplated by Education Code section 56505.

ORDER

1. The time within which Student may file an amended complaint under Title 20 United States Code section 1415(c)(2)(E)(i)(II) is extended and the amended complaint shall be filed not later than 10 days from the date of this order.³

2. The amended complaint shall comply with the requirements of Title 20 United States Code section 1415(b)(7)(A)(ii).

3. If Student fails to file a timely amended complaint by April 15, 2013, the complaint will be dismissed.

Dated: April 05, 2013

/s/

CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings

³ The filing of an amended complaint will restart the applicable timelines for a due process hearing.