

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

SAN RAMON VALLEY UNIFIED  
SCHOOL DISTRICT.

OAH CASE NO. 2013070599

ORDER GRANTING STUDENT'S  
MOTION TO AMEND COMPLAINT

On July 12, 2013, Student filed a Due Process Hearing Request (complaint), naming the San Ramon Valley Unified School District (District). On October 1, 2013, Student filed an amended complaint. The District filed an opposition to Student's amended complaint on October 3, 2013. Student filed a reply to the District's opposition on October 4, 2013.

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).) 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 District asserts that Student's amended complaint should be rejected. The District first contends that Student failed to follow applicable federal and state law because Student filed his amended complaint without filing a formal motion to amend. While the District is technically correct, the Office of Administrative Hearings (OAH) generally treats amended complaints as a motion to amend. The District has not cited to any case where a court or OAH has rejected an amended due process complaint filed in an administrative context solely on the basis that it was not accompanied by a motion to amend. Therefore, the undersigned Administrative Law Judge (ALJ) treats Student's amended complaint as a motion to amend.

The District also contends that Student's motion to amend should be denied because it was filed too close to the hearing dates and therefore causes prejudice to the District since the District has already incurred significant time, energy, and expense in preparing the case for hearing.

As stated above, a motion to amend is timely if filed at least five days prior to the date a hearing is scheduled to begin. In this case, Student filed his amended complaint seven

calendar days and five business days prior to the hearing. Because Student's amended complaint is treated as a motion to amend, OAH was required to provide the District with three days to respond to the amended complaint. For that reason, an order granting or denying Student's amended complaint was not issued by OAH on the date the amended complaint was received. Rather, OAH delayed ruling on Student's amended complaint until the District filed its response. The amended complaint is therefore timely.

The District also asserts that Student's amended complaint must be rejected because it is merely designed to circumvent the ALJ's tentative ruling granting the District's motion to dismiss all of Student's issues arising outside of the applicable two-year statute of limitations. That may very well be the impetus behind Student's amended complaint, but the District offers no authority for finding that a moving party cannot change its theory of a case in order to attempt to avoid dismissal.

Finally, the District contends that Student filed his complaint solely for purposes of delay. This matter was originally filed on July 12, 2013. The parties have requested only one continuance in the hearing dates. If Student had merely been unprepared to litigate the matter at this time, he could have simply requested a continuance. There is no evidence that Student's intent in filing his amended complaint was solely to delay the hearing. The ALJ will address this contention more fully in a separate Order regarding the District's motion for sanctions.

Student's motion to amend is timely and is granted. The amended complaint shall be deemed filed on the date of this order. All applicable timelines shall be reset as of the date of this order. OAH will issue a scheduling order with the new dates.

IT IS SO ORDERED.

Dated: October 4, 2013

/s/

---

DARRELL LEPKOWSKY  
Administrative Law Judge  
Office of Administrative Hearings