

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

RIALTO UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2014010243

ORDER GRANTING MOTION TO
AMEND COMPLAINT

On January 7, 2014, Student filed a Due Process Hearing Request (complaint), naming Rialto Unified School District (District). The complaint asserted claims which required both expedited and nonexpedited hearing calendars, often referred to as a dual schedule. Therefore, on January 10, 2014, the Office of Administrative Hearings (OAH) issued a dual scheduling order, setting the expedited portion of the complaint for mediation on January 22, 2014, for prehearing conference (PHC) on January 27, 2014, and hearing for February 4, 5, and 6, 2014. The nonexpedited portion of the complaint was scheduled for mediation on February 12, 2014, PHC on February 24, 2014, and hearing beginning March 3, 2014.

On January 24, 2014, Student filed a request to withdraw the expedited portion of the complaint. OAH granted the request and dismissed the expedited portion of the complaint on January 27, 2014. The expedited dates were vacated while the unexpedited schedule remained as calendared.

The parties did not mediate on February 12, 2014. On February 24, 2014, Administrative Law Judge (ALJ) Clifford H. Woosley convened the PHC. District requested a continuance but the parties were unable to agree upon a continuance date. Accordingly, the hearing remained as scheduled to begin March 3, 2014.

At the PHC, Student's counsel indicated she was contemplating filing an amended pleading, and District's counsel stated that it would oppose such a motion. ALJ Woosley reminded the parties that the ALJ has jurisdiction to permit the filing of an amended complaint up to five (5) days before the scheduled hearing, unless the other party consents, and his jurisdiction to grant the motion would cease as of February 26, 2014.

Late on February 24, 2014, Student filed a motion to for leave to file an amended complaint, along with the proposed amended complaint. The motion was not supported by affidavit. On February 26, 2014, District filed an opposition; Student filed a reply to the District's opposition.

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).)

Student's proposed amended complaint, in part, reasserts the very allegations he had previously withdrawn, which requires a dual scheduling. Student's counsel does not address why Student affirmatively withdrew the expedited portion of the initial complaint, only to seek leave to reassert that expedited claim.

However, the proposed amended complaint adds facts and a new issue regarding District's alleged failure to properly reply to a request for assessment with a prior written notice. These additional allegations and issue should be determined within the same due process proceeding as the remaining issues. Accordingly, leave to amend is granted.

ORDER

1. The motion to amend is timely and is granted.
2. The amended complaint shall be deemed filed on the date of this order. All presently scheduled dates are vacated and all applicable timelines shall be reset as of the date of this order.
3. OAH will issue a scheduling order with the new dates, for both the expedited and nonexpedited portions of the amended complaint (dual schedule).

DATE: February 26, 2014

/s/

CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings

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