

OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2014030397

ORDER DENYING MOTION TO
AMEND COMPLAINT

On March 10, 2014, Student filed a due process hearing request (complaint) with the Office of Administrative Hearings (OAH). On March 31, Student requested leave to amend his complaint. On April 7, 2014, OAH granted Student's request to amend his complaint and deemed the amended complaint filed as of the date of the order. On April 7, 2014, OAH issued a scheduling order setting the matter for mediation on May 13, 2014, from 1:30 PM to 5:00 PM, with a prehearing conference on May 23, 2014, at 10:00 AM, and hearing on June 3, 2014.

On April 8, 2014, Student filed a request to accelerate timelines and reset this matter to the previously calendared hearing dates. On April 8, 2014, the District filed an opposition to Student's request to accelerate timelines. On April 9, 2014, Los Angeles filed a further notice clarifying its request to proceed with the currently calendared dates.

Student filed a second request to amend his complaint on April 7, 2014. In making the second request to amend, Student stated that the first amendment of the original complaint removed a request to change the behavioral intervention provider because the Parent thought the issue had been resolved. The request asserts that the issue had not been resolved and, therefore, Student seeks to amend a second time to again allege that the behavioral intervention agency must be changed.

The Student's request to file a second amendment was not accompanied by a proof of service upon District. Accordingly, Administrative Law Judge Clifford H. Woosley directed OAH staff to contact District and inquire if it intended to respond to Student's second amendment request. On April 14, 2014, District filed a response, stating that it did not seek to prevent Student's second amendment of the complaint, as long as the presently scheduled dates remain unaltered. In other words, District opposed any order that would change the mediation and hearing dates.

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).)

After having been granted leave to file a first amended complaint, Student sought to advance the scheduled mediation and hearing dates to those that had been set as a result of his original complaint. District vigorously opposed any change of dates. In the April 10, 2014 order denying Student's request to accelerate the timelines, ALJ Theresa Ravandi explained that the code requires that the applicable timelines be restarted with the filing of an amended complaint. Further, ALJ Ravandi explained that the only way for the timelines to be altered would be for the parties to sign a waiver of the resolution period. Yet, this does not avoid the issuance of a new scheduling order because the waiver only results in the commencement of the 45-day timeline at the filing of the amended complaint.

Student's motion to file a second amended complaint is denied. The alleged recent change in circumstances, which forms the basis of the second amendment request within a week, is not sufficient reason to amend the complaint and change the mediation and hearing schedule. District has consistently and vigorously opposed any change to the scheduled dates that were set following the filing of the first amendment. Further, the granting of the amendment would result in a mediation and hearing later than the present dates, which is contrary to the Student's previously stated desire of having the dates set earlier.

Further, Student is entitled to file a separate due process request to assert the issue alleged in the proposed second amendment. Also, nothing prevents the parties from discussing issues outside those stated in a complaint at mediation. So, if the parties are agreed, they could discuss the issue raised in the proposed second amendment at the mediation scheduled in this matter.

IT IS SO ORDERED.

DATE: April 16, 2014

/s/

CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings