

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT (FATHER) ON BEHALF OF
STUDENT,

v.

SPENCER VALLEY ELEMENTARY
SCHOOL DISTRICT,

OAH Case No. 2014110312

SPENCER VALLEY ELEMENTARY
SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH Case No. 20111000761

ORDER DENYING MOTION TO FILE
AMENDMENT TO COMPLAINT

On October 20, 2014, Spencer Valley Elementary School District filed with the Office of Administrative Hearings a Due Process Request naming Student's parents on behalf of Student as respondent. On November 2, 2014, Student's father filed a Due Process Hearing Request (complaint), naming Spencer Valley as respondent. .

On November 7, 2014, the parties filed a joint stipulation to consolidate the two cases, which the OAH granted designating Father's case as the primary case.

On December 22, 2014, a Prehearing Conference was held. Because the hearing was to commence during Winter Break and that Parents were scheduled for a Family Court hearing on January 30, 2015, the hearing was continued until February 6, 2015.

On January 10, 2015, Father filed a motion to file an amendment to the complaint. The amendment was to change the proposed resolution. Father also contends that the granting of the amendment must result in the matter being continued in the same manner as when an amended complaint is permitted to be filed.

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).)

DISCUSSION

Student's parents were married from 2001 to 2008. Since their separation, they have been involved in a custody dispute involving their daughter, Student. Student's mother resides within the geographical boundaries of Spencer Valley, while Father resides within the Ramona Unified School District.

Parents have disagreed as to the extent of Student's needs and even whether she should be receiving special education services. Parents have taken these disputes to the Family Court Division of the San Diego County Superior Court, which has ruled that Student should be educated in the school district where Mother resides. Because of Student's needs and the inability of Spencer Valley to provide such services, she has been educated within the Julian Unified School District. The Parents have repeatedly litigated where Student should be educated.

In the complaint, Father's proposed remedy is to be paid the sum of \$100.00 per every day of instruction. In the proposed amendment to the complaint, Father seeks to replace the original proposed resolution thusly: "The repeated denial of Father's rights by the Julian District has significantly impeded Father's opportunity to participate in the IEP process, authorizing a remedy for a change of placement of [Student] from Spencer Valley Elementary School District to Ramona Unified School District, where Father lives."

Both sides have attached copies of various orders from the Family Court which indicates that the court has ruled that Student be educated based on Mother's residency.

OAH is without authority to countermand orders from the Family Court. Thus, the proposed resolution is not proper. Additionally, it appears that Father may be using the amendment to the complaint to be able to continue the hearing in this manner. As stated above, the hearing officer *may* grant permission to amend a complaint at any time five days to the due process hearing. (20 U.S.C. §1415(c)(2)(E)(i).) Since OAH does not have the authority to grant the proposed resolution, Father's motion to file an amendment to the complaint is without merit.

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

ORDER

Father's motion to file an amendment to the complaint in OAH Case Number 2014110312 is hereby DENIED. The consolidated matter shall proceed as scheduled.

IT IS SO ORDERED.

DATE: January 15, 2015

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings