

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

CHULA VISTA ELEMENTARY SCHOOL
DISTRICT.

OAH Case No. 2015100726

ORDER GRANTING STUDENT'S
MOTION TO AMEND COMPLAINT
AND DENYING DISTRICT'S MOTION
TO ADVANCE HEARING DATES

On October 20, 2015, Student filed a Due Process Hearing Request (complaint) with the Office of Administrative Hearings, naming the Chula Vista Elementary School District. On December 28, 2015, Student filed a Motion to Amend the Due Process Hearing Request (amended complaint). Student seeks to add one cause of action to her initial complaint.

District filed an opposition to the motion on January 4, 2016. District contends Student has not established good cause to amend her complaint.

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).)

District has not offered any authority for its proposition that a party has to establish specific "good cause" to amend a complaint, where the motion to amend is made more than five days prior to the start of the due process hearing. Nor has District provided any evidence that Student is abusing the hearing process by requesting leave to amend. Student filed her complaint only two months before she filed her motion to amend. Only one continuance has been granted to date. The leave to amend has not been made on the eve of the hearing, which is presently set to begin on January 19, 2016. District has not provided any reason as to why it would be prejudiced by granting Student leave to amend, other than the fact that it has already begun preparing for hearing.

The motion to amend is timely. District has not established good cause for denying the motion. Student's motion to amend is therefore granted. The amended complaint shall be deemed filed on the date of this order.

In its opposition, District requested that the present hearing dates be retained if OAH grants Student's motion to amend. When OAH grants a party's motion to amend, all

timelines are reset. District is, in effect, requesting that the hearing dates in this case be advanced.

A local educational agency is required to convene a resolution meeting with the parents and the relevant members of the Individualized Education Program team within 15 days of receiving notice of the Student's complaint or, as in this case, an amended complaint. (20 U.S.C. § 1415(f)(1)(B)(i)(I); 34 C.F.R. § 300.510(a)(1) (2006).)¹ The resolution session need not be held if it is waived by both parties in writing or the parties agree to use mediation. (34 C.F.R. § 300.510(a)(3).) If the parents do not participate in the resolution session, and it has not been otherwise waived by the parties, a due process hearing shall not take place until a resolution session is held. (34 C.F.R. § 300.510(b)(3).) If the parties agree to waive the resolution session, the 45-day timeline for a due process hearing begins the day after the waiver. (*Id.* at § 300.510(c)(1).)

Here, there is no indication that Student has waived the resolution session on the amended complaint. District has provided no authority to support advancing the hearing dates where a resolution session has not been waived. District's motion to advance the hearing dates on the amended complaint is therefore denied without prejudice. All applicable timelines shall be reset as of the date of this order.

ORDER

1. Student's motion to amend her complaint is granted.
2. District's motion to advance the hearing dates is denied without prejudice.
3. The presently scheduled prehearing conference and hearing dates are vacated.
4. OAH shall issue a scheduling order that sets mediation, prehearing conference and hearing dates based on a decision timeline that commences as of the date of this order.

DATE: January 5, 2016

/s/
DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings

¹ All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.