

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TWIN RIVERS UNIFIED SCHOOL
DISTRICTS.

OAH CASE NO. 2011020840

ORDER DENYING MOTION TO
AMEND COMPLAINT

On February 24, 2011, Parent filed a Due Process Hearing Request (complaint) naming Twin Rivers Unified School District (District). On March 8, 2011, District filed a Notice of Insufficiency (NOI) as to the complaint. On March 11, 2011, the Office of Administrative Hearings (OAH) granted the District's NOI as to 35 out of the 36 numbered issues stated in the complaint, and gave Student 14 days to file an amended complaint, or those issues deemed insufficient would be dismissed. On April 12, 2011, Student filed an amended complaint stating 33 numbered issues (issue 33 simply stated that Parent reserved her right to add and amend). On April 13, 2011, District filed a motion to dismiss Student's amended complaint for not being timely. On April 18, 2011, Student filed an opposition. On April 21, 2011, OAH denied District's motion to dismiss, finding that Student's delay was excusable as Parent sought the assistance of a mediator to assist her in drafting a sufficient complaint, pursuant to Education Code section 56505, and the delay in filing the amended complaint was due to difficulty in contacting the mediator, not any dilatory conduct on Student's part. On April 25, 2011, District filed a NOI as to 27 of the issues in Student's amended complaint, and a motion to dismiss allegations outside the statute of limitations. On April 28, 2011, OAH granted District's NOI and motion to dismiss as to Issues 1, 2, 5, 6, 7, 11, 12, part of issue 13, 14, 15, 18, 20, 21, 22, 24, 26, 27, 29, 30, 31, and 32 in the amended complaint. OAH allowed issues 3, 4, 8, 9, 10, part of 13, 16, 17, 19, 25, and 28 of Student's amended complaint to stand as sufficient, however all allegations in Student's amended complaint raising issues that occurred prior to April 12, 2009, were dismissed without prejudice. OAH gave Student 14 days to file an amended complaint, or those issues deemed insufficient would be dismissed. No second amended complaint was filed within those 14 days.

Thereafter on May 29, 2011, Student filed a document entitled "Parent for Student's Amended Complaint," which is treated as a motion to file a proposed second amended complaint. No explanatory information was provided regarding why Parent failed to file the proposed second amended complaint within the time set by OAH's April 28, 2011, order. The proposed second amended complaint stated 33 numbered issues (issue 33, again, simply stated that Parent reserved her right to add and amend). On May 31, 2011, District moved to

dismiss the proposed second amended complaint as untimely, which is treated as an opposition to the motion to file a proposed second amended complaint.

APPLICABLE LAW and DISCUSSION

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).)

Although a hearing officer can grant permission to amend a complaint up to five days prior to hearing, in this case, Student had been given a timeline in which to amend the complaint in response to a second, successful NOI. OAH's April 28, 2011, Order clearly gave Parent 14 days from the date of that order to amend. Parent's proposed second amended complaint, filed May 29, 2011, was not filed on time. Student was given ample time to amend considering that this matter has been on file since February, and further amendment is unlikely to further clarify the issues. Therefore, the motion to file a proposed second amended complaint is denied.

ORDER

1. The motion to file a proposed second amended complaint is denied.
2. The matter will proceed as to the portions of the first amended complaint deemed sufficient by OAH's April 28, 2011, Order.
3. All previously set dates shall remain on calendar.

Dated: June 07, 2011

/s/

JUNE R LEHRMAN
Administrative Law Judge
Office of Administrative Hearings