

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. 2014100761

ORDER DENYING FATHER'S SECOND
MOTION TO AMEND 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 Parents were scheduled for a Family Court hearing on January 30, 2015, the hearing was continued until February 6, 2015.

On December 22, 2014, a telephonic Prehearing Conference was held. The undersigned ALJ continued the hearing from December 31, 2014 to February 10, 2015, because Spencer Valley was on its Winter Break which made numerous witnesses unavailable. On December 23, 2014, OAH issued an Order following the Prehearing Conference. On December 26, 2014, an Amended Order following the Prehearing Conference was issued.

On January 10, 2015, Father filed a motion to file an amendment to the complaint. The amendment was to change the proposed resolution so as to request that OAH order Student to be transferred to the Ramona School District, where Father resides. Father also contended 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.

On January 15, 2015, OAH, by the undersigned ALJ, denied Student's motion to file an amendment to the complaint as OAH did not have authority to grant the requested proposed remedy. The ALJ also noted: "Additionally, it appears that Father may be using the amendment to the complaint to be able to continue the hearing in this manner."

On January 27, 2015, Student filed a second motion to file an amendment to the complaint seeking to strike the proposed resolution in the complaint and replace it with the following:

The repeated denial of Father's rights by the Julian District has significantly impeded Father's opportunity to participate in the IEP process. Father requests to be treated as an equal participant, with full notice, opportunity to be heard, and consideration of his opinion in providing for [Student's] needs.

On January 30, 2015, Spencer Valley filed an opposition to Father's motion.

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).)

A complaint is sufficient if it contains: (1) a description of the nature of the problem concerning the child; (2) facts relating to the problem; and (3) a proposed resolution of the problem to the extent known and available to the party at the time. (20 U.S.C. § 1415(b)(7)(A)(ii)(III) and (IV).)

Here, Father fails to request any remedy. The proposed amendment is nothing more than a statement of his complaint against Spencer Valley.² It fails to request what remedy OAH should order.

Additionally, it is not necessary for Student to file an amendment to the complaint or amend his complaint as Father is not preempted from requesting a remedy at the due process

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

² Spencer Valley is Student's district of residence. Julian is providing educational services to Student as an agent of Spencer Valley.

hearing based on the evidence presented. It appears that Father is once again attempting to delay the due process hearing. Accordingly, Father's motion is without merit.

Father's motion to file an amendment to the complaint is DENIED. The due process hearing will proceed as scheduled.

IT IS SO ORDERED.

DATE: February 2, 2015

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings