

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FOLSOM CORDOVA UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2010061139

ORDER FOLLOWING PREHEARING  
STATUS CONFERENCE AND  
DENYING MOTION TO DISMISS

On June 25, 2010, Parent, on behalf of Student (Student), filed a Due Process Hearing Request<sup>1</sup> (complaint) naming the Folsom Cordova Unified School District (District).

On August 17, 2010, District filed a Motion to Dismiss Student's complaint due to Parent's failure to participate in a resolution session. In the alternative, District requests that the Office of Administrative Hearings (OAH) continue the hearing and schedule a prehearing conference. Student did not file a written opposition to District's Motion to Dismiss or Motion to Continue.

On August 18, 2010, OAH convened a telephonic Prehearing Conference<sup>2</sup> before Administrative Law Judge (ALJ) Adeniyi A. Ayoade. Parent appeared on behalf of Student. Valerie Callori, District's representative, appeared on behalf District. The Prehearing Status Conference was recorded.

During the Prehearing Status Conference, District's Motion to Dismiss and Request for Continuance, and parties' contentions regarding the motions were considered. The ALJ issues the following order:

APPLICABLE LAW

*Motion to Dismiss*

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<sup>1</sup> A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under Title 20 United States Code section 1415(b)(7)(A).

<sup>2</sup> OAH had scheduled a PHC on August 18, 2010. However, because parties did not receive the notice of the PHC in time to prepare for the PHC, OAH deemed the August 18, 2010's PHC a Prehearing Status Conference.

A local educational agency (LEA) is required to convene a meeting with the parents and the relevant members of the Individualized Education Program (IEP) team within 15 days of receiving notice of the Student's complaint. (20 U.S.C. § 1415(f)(1)(B)(i)(I); 34 C.F.R. § 300.510(a)(1).) The purpose of the resolution session is to permit the parents of the child with special needs to discuss their complaint, and permit the school district to resolve the matter. (20 U.S.C. § 1415(f)(1)(B)(i)(IV); 34 C.F.R. § 300.510(a)(2)(2006); Ed. Code, § 56501.5, subd. (a)(4).) The school district has 30 days from receipt of the complaint to reach a resolution. (20 U.S.C. § 1415(f)(1)(B)(ii); 34 C.F.R. § 300.510(b) (1)(2006); Ed. Code, § 56501.5, subd. (c).) 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 LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made and documented, the LEA may, at the conclusion of the 30-day period, request that a hearing officer dismiss the complaint. (34 C.F.R. §300.510(b)(4).) To satisfy the documentation requirement, District must keep detailed records of telephone calls made or attempted and the results of those calls; copies of correspondence sent to the parents and any responses received, among others. (34 C.F.R. §300.322(d).)

### *Request for Continuance*

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Speedy resolution of the due process hearing is mandated by law and continuance of the hearing may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f)(3).) In ruling upon a motion for continuance, OAH is guided by the provisions found within the Administrative Procedure Act and the California Rules of Court that concern motions to continue. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, 3.1332 .) Generally, continuances of matters are disfavored. (Cal. Rules of Court, 3.1332(c).)

## DISCUSSION

### *Motion to Dismiss*

Based on a sworn declaration, District established that it offered to hold a resolution session and made reasonable efforts to schedule the resolution session at a time convenient for Parent. District made and documented multiple attempts to contact Parent to schedule the resolution session and made a total of eight telephone calls to Parent between June 29, 2010, and August 4, 2010. On one occasion, Parent agreed to participate in a resolution session on August 2, 2010, but Parent did not attend. Thus, District has established that it made reasonable attempts to get Parent's participation in a resolution session.

During the Prehearing Status Conference, Parent did not dispute District's accounts regarding its efforts to get Parent to participate in a resolution session. However, Parent reasonably explains that she was unaware that her participation in a resolution session is required by law, and that failure to participate could lead to a dismissal of the complaint. Parent, who is not represented by an attorney, did not understand the full consequences of non-participation in the mandatory resolution session. Parent is now aware of the requirement, and she is willing to participate in a resolution session. Parent also indicated that she is willing to use mediation to attempt a resolution of the issues raised in the Student's complaint, if the resolution session does not resolve the disputes.

Therefore, even though OAH has the discretion to dismiss Student's complaint due to failure of the parent to participate in a resolution session, the discretion should be exercised in a manner consistent with the spirit of the law requiring resolution sessions. The purpose of the resolution session is to permit the parent the opportunity to discuss the complaint with District, and permit District the opportunity to resolve the matter. Further, the resolution process offers parties a valuable chance to resolve disputes before expending considerable time and money in due process hearings. Therefore, because Parent understands the importance of attempting to resolve the complaint through the resolution process prior to a hearing, and because Parent has represented that she is willing to attend a resolution session, Parent will be given the opportunity to do so prior to dismissal. Therefore, at this time, District's Motion to Dismiss is denied without prejudice.

#### *Request for Continuance*

Based on District's August 17, 2010 filing with OAH, District made a request to continue all dates in this matter in order to allow parties additional time to prepare for the hearing. Student did not oppose District's request. At the Prehearing Status Conference, parties represented that they have not had the opportunity to participate in a resolution session or mediation, and both parties indicated they would like to participate. Due to the ALJ's order directing Parent to participate in a resolution session, and thus resetting the 45day time line for a due process hearing and decision pursuant to title 20 United States Code section 1415(f)(1)(B), beginning September 1, 2010, District's request for continuance is moot.

#### ORDER

1. District's Motion to Dismiss is denied without prejudice.
2. The parties shall participate in a resolution session by Tuesday, August 31, 2010. By 5:00 p.m. on Monday, August 23, 2010, Parent shall provide District with dates and times between August 18, 2010 and August 31, 2010, when she is available to participate in a resolution session. The parties may, by mutual agreement, waive resolution session or utilize mediation instead.

3. If Parent fails to participate in a resolution session, District may resubmit a Motion to Dismiss.

4. All previously set dates in this matter are vacated.

5. The 45 day-time line for a due process hearing and decision pursuant to title 20 United States Code section 1415(f)(1)(B), shall begin on September 1, 2010. OAH shall issue a new Scheduling Order and Notice of Due Process Hearing and Mediation.

IT IS SO ORDERED.

Dated: August 19, 2010

/s/

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ADENIYI AYOADE  
Administrative Law Judge  
Office of Administrative Hearings