

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

BONITA UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2012040691

ORDER DENYING DISTRICT'S
REQUEST TO HAVE ITS ATTORNEY
PARTICIPATE IN THE MEDIATION
ONLY CONFERENCE

On April 18, 2012, Bonita Unified School District (District) filed a request for a prehearing mediation, commonly referred to as a request for "mediation only." The Office of Administrative Hearings (OAH) scheduled the mediation for May 3, 2012.

On April 26, 2012, District filed a "Request to be allowed to be represented by an attorney during the mediation only conference." Student did not respond to District's request. However, District did not attach a proof of service or otherwise indicate that it had served Student with its request.

APPLICABLE LAW AND DISCUSSION

Under federal and California special education law, the parties are permitted to file a prehearing request for mediation. (Ed. Code, § 56500.3, subd. (a).) This is commonly referred to as a request for 'mediation only.' The stated Legislative intent of the 'mediation only' process is to encourage the parties to resolve the dispute "prior to filing a request for a due process hearing." (*Ibid.*) The Legislature also intended that the 'mediation only' process "be an informal process conducted in a nonadversarial atmosphere" (*Ibid.*) To further this purpose, "attorneys or other independent contractors used to provide legal advocacy services may not attend or otherwise participate in in the prehearing request mediation conferences," the 'mediation only' process. (*Ibid.*) The parties may be accompanied and advised by "nonattorney representatives" in the mediation conference, and may "[consult] with an attorney prior to or following a mediation conference." (Ed. Code, § 56500.3, subd. (b).)

The Legislature intended that the 'mediation only' process be informal and streamlined. These prehearing 'mediation only' conferences are designed to be separate and distinct from those mediations or resolution sessions held after the filing of a request for due

process hearing.¹ Therefore, District's request to have its attorney participate in the prehearing 'mediation only' conference is improper, **unless both parties agree to waive the requirement of the law herein, and allow the participation of their attorneys or such other legal representatives in the 'mediation only' conference.** In this matter, no record of an agreement between parties, to allow their respective attorneys to participate in the prehearing 'mediation only' conference, has been provided. Further, it does not appear that District's written request herein discussed was served on Parents. No proof of service or other information showing that the Parents received a copy of the request was submitted to OAH.

Nonetheless, if both parties intend that their attorneys or legal representatives be able to attend the prehearing 'mediation only' conference, parties must submit a joint request to OAH. Said joint request would be subject to the discretion of the mediator assigned to the matter. Accordingly, District's request is denied without prejudice.

ORDER

District's Request to have its attorney participate in the 'mediation only' conference is denied without prejudice.

Dated: May 8, 2012

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings

¹ Attorneys and other legal representatives are allowed to participate in those mediations scheduled after the filing of requests for due process hearings, and if both parties agreed, in the resolution sessions held after filing of the requests for due process hearings.