

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

SOUTH PASADENA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012110590

ORDER DENYING MOTION TO
DISMISS

On November 16, 2012, Student filed with the Office of Administrative Hearings (OAH) a due process hearing request (complaint) naming the South Pasadena Unified School District (District).

On January 3, 2013, the District filed a motion to dismiss due to Student's parents' non-participation in a mandatory resolution session. On January 4, 2013, the District filed another motion to dismiss because Student named a different school district in the proposed resolutions. On January 6, 2013, Student filed an opposition.

APPLICABLE LAW

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) (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 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).)

¹ All subsequent references to the Code of Federal Regulations are to the 2006 version.

Special education due process hearing procedures extend to the parent or guardian, to the student in certain circumstances, and to “the public agency involved in any decisions regarding a pupil.” (Ed. Code, § 56501, subd. (a).) A “public agency” is defined as “a school district, county office of education, special education local plan area, . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs.” (Ed. Code, §§ 56500 and 56028.5.)

DISCUSSION

The District’s motion, supported by sworn declaration of Kendra Rose, alleges that Student’s parents did not attend the resolution session scheduled for December 10, 2012. However, Student’s response demonstrates that the parties rescheduled the resolution session for January 10, 2013.² Therefore, the District’s motion is denied as premature as the resolution session is scheduled for tomorrow.

As to whether Student named the District in the complaint, the body of the allegations clearly show that the allegations are against the District by referencing the defined term of “District.” As to referring to another school district in the proposed resolutions, this was a simple oversight and no reader would presume that Student was requesting that another school district, and not the District, provide the requested relief. Accordingly, the District’s motion to dismiss as not being named in the complaint is denied.

ORDER

The District’s motions to dismiss are denied. The matter shall proceed as scheduled provided that Student’s parents attend the January 10, 2013 resolution session. The District may file another motion to dismiss if Parents do not attend the resolution session.

Dated: January 9, 2013

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings

² On January 4, 2013, OAH granted the parties’ continuance request, setting the dates for hearing for March 2013.