

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

PALMDALE SCHOOL DISTRICT.

OAH CASE NO. 2009030660

ORDER DENYING MOTION TO
DISMISS

On March 13, 2009, advocate Brian Allen, on behalf of Student, filed with the Office of Administrative Hearings (OAH) a due process hearing request (complaint) against the Palmdale School District (District).¹

On April 16, 2009, attorney Lee G. Rideout filed on behalf of District a motion to dismiss. OAH has received no response from Student.

APPLICABLE LAW

A party who files an adequate complaint in a dispute under the Individuals with Disabilities in Education Act (IDEA) is generally entitled to a hearing on his claims. (20 U.S.C. § 1415(f)(1)(A); Ed. Code, §§ 56043(s), 56501(b)(4).)

DISCUSSION

In this matter, the District requests that OAH dismiss Student's complaint because the allegations in Student's claims are moot since the District is providing the requested adaptive physical education services, District made requested changes to Student's educational program in the April 6, 2009, Individualized Educational Program (IEP), and Parent consented to the April 6, 2009, IEP.

The District's changes to Student's IEP appear to resolve the issues in Student's complaint and provide the proposed resolutions that Student requested in the complaint. However, the District fails to point any authority that would require OAH to hear and

¹ The District attached to its motion an amended complaint, dated March 24, 2009, that Student served on the District. Student has not filed a motion with OAH to amend the complaint.

determine the equivalent of a motion for summary adjudication on this issue without giving Student the opportunity to develop a factual record regarding whether the District adequately resolved the issues in the complaint. The District's reliance on *Newark Unified School District v. Student* (2000) SEHO Case No. 2009-519, is misplaced because that case involved an issue as to whether there was an actual IEP at issue because the parties had not completed the IEP process when the school district filed its hearing request. Thus, that decision is not persuasive authority in the present matter. Therefore, the District did not establish that this matter should be dismissed as moot.

ORDER

The District's Motion to Dismiss is denied.

Dated: April 28, 2009

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings