BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT on behalf of STUDENT, v. LOS ANGELES UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2009080646 ORDER: FOLLOWING PREHEARING CONFERENCE; AND DENYING DISTRICT'S MOTION TO DISMISS.

On October 21, 2009 at approximately 2:00 p.m., Eileen M. Cohn, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), conducted a telephonic prehearing conference in the above-entitled matter. The prehearing conference (PHC) was recorded. Mother appeared on behalf of Student, the petitioner. Patrick Balucan, Attorney at Law, Office of the General Counsel, Los Angeles Unified School District, appeared on behalf of respondent Los Unified School District (District).

Mother filed the due process hearing request on behalf of Student on August 19, 2009. District, as respondent had the right to challenge the sufficiency of the complaint. (20 U.S.C. § 1415(b) & (c).) District did not challenge the sufficiency of the complaint.
On October 2, 2009, the matter was continued by stipulation of the parties at the mediation.
On October 15, 2009, District filed a motion to dismiss on the ground that OAH did not have jurisdiction to determine the issues raised in Student's due process hearing request. District maintained that Student's due process hearing request alleged that District improperly denied Student a permit, an issue not within the jurisdiction of OAH.

Based on discussions with the parties, Orders were made at the conference, which are reiterated and augmented, as follows.

District's motion to dismiss is denied. District did not timely challenge the sufficiency of the complaint and can not do so in a motion styled as a motion to dismiss. Further, Student's complaint raises several possible issues and refers to facts, including facts related to District's purported refusal to honor a timely permit, and offering a placement far away from the permitted residence, which may prove relevant in a Student-filed due process hearing questioning whether District made an offer of a free and appropriate public education (FAPE). (*See* 34 C.F.R. § 300.116; Ed Code § 56341(b).)

In discussing the issues raised in the due process hearing request at PHC, Mother maintained that her complaint contained two key allegations under the IDEA, as articulated with the assistance of the ALJ:

1. Whether District denied Student a FAPE in its IEP offer of April 2009 by failing to follow the required procedures, including, failing to include as part of the IEP team the required IEP members such as the regular education teacher, and other individuals essential to make an appropriate offer, such as the psychologist; and

2. Whether District's offer, which was a change in Student's then educational placement, denied Student a FAPE because the offer of unsupervised bus transportation was inappropriate.

On closer inspection of the hand-written due process hearing request, as clarified by Mother's discussion at the PHC, Mother appears to suggest grounds, other than transportation, in support of her allegation that District's placement offer was inappropriate. In protest of Student's change of placement, Mother argued that the distance between the permitted residence, which is the residence of Student's babysitter, and the offered placement, was unacceptable because, among other facts, the babysitter could not retrieve Student from the new placement. Mother argued that the placement was also dangerous. Although some of the reasons she raised in support of her claim that it was dangerous may not be appropriate to a due process hearing under the IDEA, she also referred to the psychologist's report which she claimed at the PHC addressed the need for Student to be retained in a safe and supported school environment with his familiar friends.

Mother set forth a series of proposed remedies throughout the due process hearing request. Some remedies were labeled as such; other remedies were suggested by her factual allegations, including a request for reimbursement for Student's private school tuition. Mother had concerns as to whether she made these requests clear.

Based upon the discussions during the PHC and Student's due process hearing request, the ALJ determined that to best further the goal of conducting an efficient due process hearing, Mother should have the opportunity to consult with an attorney of her own choosing, or an OAH-mediator, and amend the due process hearing request to further clarify the issues. (*See* Ed. Code, § 56505 [A parent who is not represented by an attorney may request that the Office of Administrative Hearings provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint.]) Mother was referred to the OAH web-site to identify possible attorneys, and provided with the contact information for the assigned clerk, McKenzie Kudrna (916-263-0880) **Please note that Mother is not required to consult with an attorney or a mediator to file an amended pleading, and may file an amending pleading regardless of whether she consulted with an attorney or a mediator.**

Mother shall have upwards of thirty days from the date of this Order to file an amended due process hearing request. Mother is encouraged to file an amended due process hearing request as soon as possible so that the matter can proceed forthwith. A scheduling order with new mediation, PHC and hearing dates will be issued after the amended due process hearing request is filed.

At the PHC the ALJ advised the parties that Student's due process hearing request would be dismissed without prejudice if Mother does not file an amended due process hearing request within the thirty day period. Based upon a further review of the pleadings, the ALJ has determined that the matter can proceed to hearing on the two issues identified above if Mother elects not to file an amended due process hearing request within the thirty day period. Accordingly, the Order below provides for a further continuance of the PHC and DPH based upon the above identified two issues, if Mother does not amend the pleading within thirty days from the date of this Order.

ORDER

1. District's Motion to Dismiss is denied.

2. The current hearing dates are vacated.

3. The matter is continued to allow Mother to file an amended due process hearing request, or alternatively, to proceed to a continued PHC and DPH based upon the two issues identified during the PHC of October 21, 2009, and set forth above.

3. If Mother does not file an amended due process hearing request by thirty days from the date of this Order, the matter shall proceed to a PHC on Wednesday, December 2, 2009, at 1:30 p.m, and DPH on December 9, 10, and 11, 2009.

IT IS SO ORDERED.

Dated: October 23, 2009

/s/

EILEEN M. COHN
Administrative Law Judge
Office of Administrative Hearings