

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. 2012010173

ORDER DENYING MOTION TO
DISMISS AND DENYING STUDENT'S
REQUEST FOR SANCTIONS

On January 9, 2012, Craig Liu, Esq., filed with the Office of Administrative Hearings (OAH) a due process hearing request (complaint) on behalf of Parents on Behalf of Student (Student) naming South Pasadena Unified School District (District) as the respondent.

On January 27, 2012, Adam Newman, Esq., filed on behalf of the District a motion to dismiss due to Student's parent's non-participation in a mandatory resolution session. On January 30, 2012, Student filed an opposition to the motion to dismiss and a request for sanctions.

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).) 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).)

DISCUSSION

The District's motion, not supported by sworn declaration, indicates that Parents did not attend the resolution session scheduled for January 24, 2012, as confirmed in writing by the District. There is no indication that the District subsequently attempted to reschedule the

resolution session prior to the end of the 30-day resolution period. Instead, the District filed its motion before the end of the 30-day resolution period, which dates from the filing of Student's complaint on January 9, 2012.

Pursuant to the sworn declarations of both parents, Student contends in his opposition that on January 9, 2012, Parents agreed to a resolution session date of January 27, 2012, by e-mail with the District's Principal Yim; that said date was confirmed by Principal Yim in an e-mail dated January 11, 2012; and that on January 18, 2012, Principal Yim cancelled the January 27, 2012 resolution session. Further, on January 18, 2012, Parents received a letter from the District scheduling the resolution session for January 24, 2012, and on that same date, Parents sent the District's Special Education Director an e-mail indicating that they were not available on the January 24, 2012 date, but provided two additional dates they were free for the resolution session. Parents did not receive a response to this e-mail, and on January 22, 2012, parents again e-mailed both the Special Education Director and Principal Yim reiterating that they could not attend a resolution session on January 24, 2012, and again proposed two alternate dates which accommodated their work schedules. The District did not respond, but filed this motion.

Student's parent is required to participate in a resolution session before a due process hearing may be commenced, and OAH has discretion to dismiss the matter if the parent refuses to participate in a resolution session and the district provides appropriate documentation supporting its motion to dismiss.

Based upon the above discussion, the District has failed to establish that the District made reasonable efforts to obtain Student's parent's participation in the resolution session. Student has provided OAH with adequate reason for failing to participate in a resolution session within 30 days. Therefore, the District's motion to dismiss Student's complaint is denied. A resolution session shall be held within ten (10) business days from the date of this order.

Additionally, Student has requested sanctions for the filing of a frivolous motion to dismiss. An Administrative Law Judge may issue sanctions and require a party, the party's attorney or other authorized representative, or both to pay reasonable expenses, including attorney's fees, incurred by another party as a result of bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay. (C.C.P §128.5, subd. (b)(2); 5 C.C.R §3088; Gov. Code, §§11455.30.)

While the District's motion to dismiss was mistaken in its allegations, it does not rise to the level of "frivolous" or for the sole purpose of harassing Student. Further, Student provided no declaration of attorney's fees to justify such an order. Therefore, Student's request for sanctions is denied.

ORDER

1. The District's motion to dismiss is denied.
2. The parties are ordered to participate in a resolution session within ten (10) business days of the date of this order.
3. All previously scheduled dates are vacated. The timelines for hearing established pursuant to Title 20 United States Code section 1415(f)(1)(B) shall recommence 11 business days from the date of this order. OAH shall reschedule the mediation and hearing dates pursuant to this order.
4. Student's request for sanctions is denied.

Dated: February 1, 2012

/s/

JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings