

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FAIRFIELD SUISUN UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012040652

ORDER DEFERRING RULING ON
MOTION TO DISMISS ISSUE NO. 4

On April 12, 2012, Parent, on behalf of Student, filed a Request for Due Process Hearing (complaint) naming the Fairfield-Suisun Unified School District (District) and setting forth six issues (although the complaint did not identify a second issue). Issue No. 4 in the complaint addressed the District's alleged failure to comply with a request made by Parent at an individualized education program (IEP) team meeting on October 11, 2011 that an assistive technology consultant contact her to discuss mainstreaming and hearing aides for Student.

On April 27, 2012, District timely filed a Notice of Insufficiency (NOI) as to Student's complaint. In that Notice the District argued that Issue No. 4 was barred by a settlement agreement between the parties executed in February 2012. On April 30, 2012, the Office of Administrative Hearings (OAH) issued an order finding Issues 3 and 4 sufficiently pled and Issues 1, 5, and 6 insufficiently pled, and giving Student leave to amend within 14 days. The Order declined to address the District's argument about the settlement agreement and Issue No. 4 because that argument should have been made in a motion to dismiss.

On May 4, 2012, the District moved to dismiss Issue No. 4 on the ground that it was barred by the settlement agreement. Student did not respond to the motion.

On either May 14 or May 16, 2012, Student filed a document entitled "Notice of Sufficiency" that pleaded the original Issues 1, 5, and 6 in greater detail. On May 16, 2012, OAH held a prehearing conference in the matter and accepted Student's "Notice of Sufficiency" as a first amended complaint.

On May 29, 2012, the District filed a second NOI, contending that the first amended complaint was still insufficient as to Issues 1, 5, and 6, and failed to identify any Issues 2, 3, and 4.

On May 30, 2012, OAH ruled that Issues 1, 5, and 6 were still insufficiently pled and gave Student 14 days to amend the complaint. That Order provided that for clarity, Student's Issues 3 and 4 in the original complaint would be deemed part of the first amended complaint, and were adequately pled. The May 30, 2012 Order also provided that if Student amended his complaint, he should include Issues 3 and 4 in the newly amended complaint so the entirety of his complaint would be in one document.

On June 1, 2012, the District filed a request for a ruling on its May 4, 2012 motion to dismiss Issue No. 4.

DISCUSSION

Student has until June 13, 2012, to file a second amended complaint. It is not clear whether Student intends to include Issue No. 4 from the original complaint in his second amended complaint. Ruling on the District's motion to dismiss, filed May 4, 2012, will therefore be deferred until Student does or does not file a second amended complaint.

ORDER

1. If Student timely files a second amended complaint that includes Issue No. 4 from the original complaint, the District's motion to dismiss Issue No. 4 will be deemed to have been refiled on the same day that the second amended complaint is filed, and Student shall have three business days to respond to that motion.

2. If Student timely files a second amended complaint that does not include Issue No. 4 from the original complaint, the District's motion to dismiss, filed May 4, 2012, will be denied as moot without further order of OAH.

3. If Student does not timely file a second amended complaint and the matter proceeds on Issues No. 3 and 4 from the original complaint, then the District's motion to dismiss Issue No. 4 will be deemed to have been refiled on June 13, 2012, and Student shall have three business days to respond to it.

Dated: June 4, 2012

/s/

CHARLES MARSON
Administrative Law Judge
Office of Administrative Hearings