

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. ROCKLIN UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2011050660
ROCKLIN UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2011030240 ORDER DENYING MOTION TO DISMISS WITHOUT PREJUDICE AND GRANTING MOTION TO CONTINUE

On May 16, 2011, Rocklin Unified School District (District) moved to dismiss Student's Request for Due Process Hearing (complaint) on the ground that Student failed to participate in a resolution session. In the alternative, District requested that the matter be continued to allow time to implement an order to attend the resolution session. Student did not respond to District's motion.

FACTUAL AND PROCEDURAL BACKGROUND

On March 1, 2011, District filed complaint, OAH case number 2011030240 (First Case), naming Student as respondent.

The day before the hearing, May 16, 2011, Father filed a letter with OAH directed to the attention of the undersigned. Father's letter requested OAH issue an order granting affirmative relief. Father alleged that Student was denied a free and appropriate public education (FAPE); that Father is entitled to reimbursement for various services he provided Student that District allegedly should have provided; that District failed to assess Student's needs appropriately and thoroughly; and that District failed to provide appropriate "summer school" services. Father's letter attempted to raise these issues as "counterclaims," which the IDEA does not recognize, and Father sought to have these issues adjudicated as part of the hearing of District's case.

On May 17, 2011, the hearing in First Case commenced before Gary A. Geren, Administrative Law Judge, Office of Administrative Hearings (OAH). District was

represented by Joseph Spector and Jesse Carriger, Attorneys at Law. Student was represented by his father (Father). At hearing, ALJ Geren addressed Father's letter as a preliminary matter. The ALJ ruled on the record that: Father's letter was a complaint (Second Case); that First Case and Second Case were consolidated for one hearing; the consolidated matters were continued; and that a mediation date should be scheduled.

On May 17, 2011, during oral argument, the parties indicated that they were interested in expediting the matter and waiving mediation.

On May 17-24, 2011 the parties engaged in written communication regarding scheduling the resolution session and the IEP. On May 18, 2011 District wrote to Father, inviting him to attend a "mandatory resolution session," on May 31, 2011. In an e-mail dated May 19, 2011, Father confirmed by e-mail that he would attend an IEP team meeting on May 27, 2011, but did not respond to District's request to attend the mandatory resolution session. On May 24, 2011, District e-mailed Father reminding him that he had not responded to its invitation to the mandatory resolution session. It offered an alternative date, and alternative times, for the resolution session. There is no evidence that Father scheduled or agreed to appear at a resolution session, in person or by telephone.

On May 23, 2011, ALJ Geren issued a written order memorializing his May 17, 2011, hearing order. Second Case was deemed filed on May 17, 2011, and designated as OAH 2011050660. First Case and Second Case were consolidated. All dates previously set in First Case were vacated, the consolidated matter was continued, and the 45-day timeline for issuance of the decision were based on the filing of Second Case.

In his May 23, 2011, Order, ALJ Geren also acknowledged the parties' stated interest in expediting the timelines and advised them to file a written request to expedite the mediation and waive the 30 day resolution period.

OAH issued a Scheduling Order notifying the parties of mediation on June 21, 2011, a telephonic prehearing conference on July 6, 2011, and the due process hearing on July 12, 2011.

The parties never filed a written request to expedite the mediation and waive the 30 day resolution period. The parties never filed a written waiver of the resolution session.

The resolution session was never held.

ANALYSIS

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); Ed. Code, § 56501.5.) 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) (2006); Ed. Code, § 56501.5.) 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) (2006) .) 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) (2006).)

Here, District attempted to schedule a resolution session and sent at least two communications to Father. Father agreed to attend the IEP, but did not respond to its request for a resolution session. From the evidence provided by District, its efforts to schedule a resolution session were reasonable.

Father was provided ample opportunity to waive the mandatory resolution session. The parties discussed expediting the hearing with ALJ Geren and ALJ Geren advised the parties to enter into a written stipulation. District notified Father of the mandatory resolution session and attempted to schedule it with Father's cooperation.

As such, Father must participate in a resolution session with District, or risk dismissal, unless the parties agree in writing to waive the resolution session. Accordingly, Father is ordered to cooperate with District and participate in a resolution session within thirty days of this order, or enter into a stipulation with District either waiving the resolution session, or participating in mediation instead of the resolution session. If Father fails to attend the mandatory resolution session within 30 days of this order, or enter a mutual waiver, Student's matter shall be dismissed upon District's motion.

ORDER

1. District's motion to dismiss is denied without prejudice.
2. Father is ordered to participate in a resolution session within 30 days of the date of this Order, or stipulate in writing with District, for District to file with OAH, that the parties waive the resolution session, or shall participate in mediation (on proposed dates and times) instead of the resolution session. OAH shall calendar mediation upon receipt of the parties' written stipulation. If Student fails to attend the resolution session within 30 days or follow the procedure above, District shall re-file its motion to dismiss Student's case.
3. District's motion to continue the matter is granted. The timelines for hearing established pursuant to Title 20 United States Code section 1415(f)(1)(B) shall be reset and continued as of the date of this order.
4. All previously scheduled dates are vacated.

5. The telephonic prehearing conference is continued to Wednesday, August 17, 2011, at 10 a.m. and the due process hearing is continued to Tuesday, August 23, 2011, 9:30 a.m., through Thursday, August 25, 2011.

Dated: June 24, 2011

/s/

EILEEN M. COHN
Administrative Law Judge
Office of Administrative Hearings