

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

CHICO UNIFIED SCHOOL DISTRICT.

OAH Case No. 2014120106

ORDER DENYING MOTION TO  
DISMISS WITHOUT PREJUDICE

On November 19, 2014, Student's parents on behalf of Student filed a request for a due process hearing (complaint), naming the Chico Unified School District.

On November 24, 2014, Chico filed a response to Student's complaint. The response raised affirmative defenses, including but not limited to, the statute of limitations and lack of jurisdiction. The document concluded, in part, with the following language: "For the reasons stated above, and based upon evidence and arguments to be developed at the due process hearing, Respondent . . . requests the instant due process matter be dismissed . . . ."

On November 25, 2014, Student filed an opposition to a motion to dismiss. Student stated that it was not clear if Chico's document was intended to include a motion to dismiss as well as a response to Student's complaint. However, in an abundance of caution, Student decided to file an opposition. OAH has received no response from Chico.

DISCUSSION

As Student pointed out, Chico's responsive papers are ambiguous. There is dismissal language, but that language appears to refer to what Chico would like to see happen after a hearing, not a request for an immediate motion. If Chico intended its response to include a motion to dismiss, it has not supported that motion with sufficient argument or evidence. On that basis, the motion must be denied.

However, if Chico did not intend to file a motion at this time, it would not seem fair to foreclose Chico's ability to do so in the future. Therefore the motion to dismiss is denied without prejudice.<sup>1</sup>

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<sup>1</sup> If Chico did not intend to file a motion to dismiss, then it is strongly suggested that Chico avoid using dismissal language in its future responses to avoid this type of confusion.

ORDER

The motion to dismiss is denied without prejudice. The matter shall proceed as scheduled.

DATE: December 4, 2014

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SUSAN RUFF  
Administrative Law Judge  
Office of Administrative Hearings