BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: CHAFFEY JOINT UNION HIGH SCHOOL DISTRICT, v. PARENTS ON BEHALF OF STUDENT.	OAH Case No. 2018050543 ORDER DENYING STUDENT'S MOTION TO DISMISS

PROCEDURAL HISTORY

Chaffey Joint Union High School District filed a request for due process hearing (complaint) with the Office of Administrative Hearings on May 11, 2018, naming Parents on behalf of Student. Chaffey's sole issue for hearing is whether its last offer to Student of an individualized education program constitutes a free appropriate public education in the least restrictive environment such that Chaffey may implement the IEP over Parents' lack of consent.

OAH issued a scheduling order in this matter on May 14, 2018. Among other issues, the order notified the parties that all motions had to be filed three business days before the prehearing conference scheduled in the case.

On May 25, 2018, OAH granted Student's motion for continuance to allow Student to obtain an attorney. OAH continued the prehearing conference to July 9, 2018, and the due process hearing to July 17, 2018. OAH informed the parties that the matter would proceed on those dates absent exceptional good cause.

On July 9, 2017, the day the telephonic prehearing conference took place, Student filed a motion to dismiss Chaffey's complaint. Student contends that the complaint should be dismissed because there is a case pending in federal district court involving the same parties and the same issues presented in the instant OAH case. Student contends that the instant case should be dismissed to avoid potential conflicting decisions from the two adjudicating bodies.

Chaffey timely filed an opposition to Student's motion to dismiss on July 11, 2018.

APPLICABLE LAW AND DISCUSSION

Student's motion to dismiss does not adequately explain the proceedings pending in federal court. Chaffey's opposition, supported by declaration of its attorney, clarifies those proceedings. Chaffey filed a restraining order against Student in San Bernardino County Superior Court on May 11, 2018. Student moved to continue the hearing on the restraining order; the matter was continued to June 28, 2018. The evening before the superior court hearing, Student filed a removal to federal district court of the motion for restraining order. Student simultaneously filed a counter claim with the federal court. On June 28, 2018, the superior court granted the restraining order requested by Chaffey. The order, among other things, requires Student to stay at least 100 yards from his high school through June 28, 2019.

Chaffey contends that Student's motion to dismiss is untimely. It also contends that Student's federal action will be dismissed because neither party has exhausted administrative remedies relating to the issue of the appropriateness of Chaffey's IEP offer.

Chaffey is correct that Student's motion to dismiss, filed immediately before the prehearing conference began, is untimely. However, Student is proceeding in pro per, represented by his father, and may not have understood that the directives of the scheduling order applied as well to the continued hearing.

Chaffey's arguments that the federal court will dismiss the federal case based on lack of administrative exhaustion, is speculative at this point. Although Chaffey makes a logical argument as case law would support a finding that Student has not exhausted his administrative remedies, no one can state with any certainty what the federal court will rule on the issue.

However, that notwithstanding, Student has failed to cite to any persuasive authority in support of his motion to dismiss, or to make a persuasive argument that an administrative proceeding should not go forward because one or more parties has filed a case raising similar issues in another forum. Student's argument that the federal court may find that exhaustion is not required does not address whether an administrative body must or even should dismiss a case if there is also a federal proceeding pending on the same or similar issue. Student's citation to case law concerning a school district's failure to implement an IEP and his citation to 42 United States Code section 1983 are both irrelevant to the issue of whether the instant administrative case should be dismissed.

Finally, Student argues that dismissal of the instant OAH case is warranted to lessen the burden on the parties and to further the issue of judicial economy. However, it is Student who has created this situation by filing a matter in federal court which should first be heard by and determined in an administrative proceeding.

As Student has not provided a sufficient basis in support of his motion to dismiss, his motion is denied. This matter shall proceed to hearing on July 17, 2018, as detailed in OAH's July 9, 2018 Order Following Prehearing Conference.

IT IS SO ORDERED.

DATE: July 11, 2018

DocuSigned by:
Darrell Lepkowsky
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DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings