BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

MT. DIABLO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023060688

ORDER DENYING MOTION TO DISMISS, EXTENDING PROCEDURAL TIMELINES, AND CONTINUING DUE PROCESS HEARING

JULY 14, 2023

On June 16, 2023, Student filed a due process hearing request with the Office of Administrative Hearings, called OAH, naming Mount Diablo Unified School District. On July 7, 2023, Mt. Diablo filed a motion to dismiss the matter for failure of Parent to participate in the mandatory resolution session in good faith. Mt. Diablo concurrently filed declarations under penalty of perjury by Mt. Diablo's Alternative Dispute Resolution Administrator Ivanna Huthman and Attorney Elizabeth Schwartz in support of the motion. On June 13, 2022, Student filed opposition to Mt. Diablo's motion to dismiss,

accompanied by Advocate James Peters' and Parent Lisa Hanna's declarations under penalty of perjury in support of the opposition.

APPLICABLE LAW

A local educational agency is required to meet with the parents and Student's relevant Individualized Education Program team members within 15 days of receiving Student's complaint. (20 U.S.C. § 1415(f)(1)(B)(i)(I); 34 C.F.R. § 300.510(a)(1) (2006). The meeting called a resolution session, can be waived in writing by both parties or if they agree to use mediation. (34 C.F.R. § 300.510(a)(3).) If the parents do not attend the resolution session, and it was not waived, there is no due process hearing until the resolution session is waived or held. (34 C.F.R. § 300.510(b)(3).) The respondent can request the case be dismissed after the 30-day period if it documented reasonable efforts to hold the resolution session and the parents did not attend. (34 C.F.R. §300.510(b)(4).)

Participation in a resolution session is not optional to any party. (34 C.F.R. § 300.510(b)(3)(2006).) The purpose of the [resolution session] is for the parent of the child to discuss the due process complaint, and the facts that form the basis of the due process complaint, so that the [local educational agency] can resolve the dispute that is the basis for the due process complaint." (34 C.F.R. § 300.510(a)(2)(2006).) However, there is no definition of what "participation" entails at a resolution session.

Comments to the regulations explain that the law requires more than mere attendance at an early resolution session. (Federal Register Volume 71, No. 156, p. 46545, 46702 (Aug. 14, 2006).) The Comments provide that where a local educational agency convenes a resolution meeting with the parent and the parent fails to

participate, the agency would need to continue making diligent efforts to obtain participation and, if unsuccessful, seek hearing officer intervention. (*Ibid.*)

The Office of Special Education Programs, referred to as OSEP, found that, "it would be inconsistent with the requirements in 34 C.F.R. § 300.510(a)(2) regarding the purpose of the resolution meeting for the [local educational agency] to refuse to discuss the issues raised in the parent's due process complaint during that meeting." (*Letter to Casey* (Mar. 27, 2013).) A parent's refusal to discuss the issues in that parent's complaint raises the same concerns. However, OSEP letters are not binding authority.

DISCUSSION

Here, the parties did not waive the resolution session. Mount Diablo and Student held the resolution session on June 28, 2023, and Parent, Peters, and Huthman attended the resolution session via telephone or videoconference.

Mt. Diablo alleges that it asked questions to both Peters and Parent which sought clarification of the proposed resolutions pled in the complaint to facilitate resolution of the case because the complaint was unclear. Student's complaint includes approximately five pages of proposed resolutions that are vague, ambiguous, and in some instances, duplicative. It is reasonable to assume that clarification by Mt. Diablo would need to take place because of the confusing presentation of the complaint, including the proposed resolutions.

According to Huthman, she asked Parent what she needed to resolve the matter and she said "everything that is in the paper" referring to the complaint. When asked specific questions regarding the five pages of proposed resolutions, neither Peters nor Parent would answer any clarifying questions and only referred her back to the complaint. Peters further added that he was not an attorney and could not clarify the

complaint. Additionally, Huthman contends that Peters interrupted her numerous times, raised his voice at her, and berated her. She ended the resolution session when he began to make personal attacks at her and believed he was obstructing the process. The resolution session lasted approximately 50 minutes.

Student argues it was Mt. Diablo and not Student that failed to participate in the resolution session in good faith and requests that it be sanctioned because it failed to answer Student's questions, was not prepared, did not personally know Student, attempted to conduct impermissible discovery, and was looking for defenses to the case rather than resolutions. However, Student concedes that Parent would not answer clarifying questions regarding the complaint, claiming because she did not have the legal expertise to do so. However, this argument is unpersuasive. Student did not refute Mt. Diablo's contention that Peters also refused to answer clarifying questions regarding the complaint.

Under both parties' rendition of the facts, Mt. Diablo participated in the resolution session in the manner expected under the statutory guidance as it was asking Student to clarify the complaint and what was sought to resolve the case, and Peters and Parent refused to participate when they refused to discuss the complaint. Although Mt. Diablo failed to offer sufficient legal authority to dismiss the case, the declarations submitted by both sides demonstrated that the meeting on June 28, 2023, did not constitute a resolution session because the parties were not given the opportunity to discuss the due process complaint.

Every court has the inherent power to control the disposition of the cases on its docket. (*Landis v. North American Co.*, 299 U.S. 248, 254-255, 57 S.Ct. 163, 165-166 (1936).) By analogy, that same power extends to hearing officers in administrative proceedings. Cases may not proceed to hearing if a resolution session has not been

held or waived, and one party may not act unilaterally to waive the resolution session. (71 Fed. Reg. 47602, No. 156 (Aug. 14, 2006.)

Multiple OAH orders have noted Peter's similar obstructionist behavior at previous resolution sessions. These orders determined Student had not participated in the resolution session and reset the timelines in those matters or dismissed the case. See:

Student v. Twin Rivers Unified School District, OAH case number 2023020613, April 24, 2023 Order Following Prehearing Conference for Hearing By Videoconference; Order Granting Motion to Dismiss; Order Granting In Part, and Denying In Part, The Motion For Sanctions, And Shifting Fees;

Student v. Twin Rivers Unified School District, OAH case number 2023020611, March 28, 2023 Order Following Prehearing Conference For Hearing By Videoconference And Extending Procedural Timelines;

Student v. Kelseyville Unified School District, OAH case number 2022080771, November 4, 2022 Order Denying Motion To Dismiss For Failure To Participate In Resolution Session And Order Continuing Due Process Hearing.

Yet, despite these previous orders, the same or similar behavior continues here, refusing to discuss questions posed regarding the complaint. Mt. Diablo may make a request in writing for copies of the above cited orders to OAH.

As previously stated, Student's proposed resolutions were unclear and confusing and needed clarification so that Mt. Diablo could understand the nature of Student's requests to facilitate settlement. By failing to answer questions regarding the complaint and proposed resolutions, Student failed to participate in the resolution session. Thus,

Mt. Diablo demonstrated that the parties failed to have the opportunity to meet with Parent to discuss the due process complaint including the basis of the proposed resolutions. Because of this, the case may not yet proceed to hearing. All current dates for hearing are vacated. The timeline to complete the resolution session is extended.

ORDER

1. Mt. Diablo's motion to dismiss is denied.
2. The parties are ordered to hold a resolution session within 30 calendar days of the date of this order.
3. This matter is continued as of the date of this order.
4. All previously set dates in this matter are vacated.
5. The prehearing conference is set for August 18, 2023, at 3:00 PM.
6. The due process hearing is set for August 29, 30, and 31, 2023.

Cynthia Fritz

Cynthia Fritz
Administrative Law Judge
Office of Administrative Hearings