BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. ANAHEIM UNION HIGH SCHOOL DISTRICT.	OAH Case No. 2017090353 ORDER: (1) GRANTING MOTION TO VACATE DATES AND EXTEND TIMELINE; (2) DENYING REQUEST TO AMEND COMPLAINT; AND (3) ORDER TO SHOW CAUSE RE STUDENT'S EDUCATIONAL RIGHTS

On September 12, 2017, Parents on behalf of Student filed a due process hearing request (complaint) with the Office of Administrative Hearings, naming Anaheim Union High School District.

On September 29, 2017, District filed a motion to vacate existing dates and extend procedural timelines due to Parent's failure to participate in a mandatory resolution session.

On October 3, 2017, Student filed a notice of amended complaint, which will be treated as a request to amend the complaint.

Both motions touch upon a prior OAH order, in another OAH matter, that Parents provide proof that they hold educational rights for Student, who is over 18 years of age. Accordingly, the two motions are addressed in this one order, which includes an Order to Show Cause regarding educational rights.

APPLICABLE LAW

A local educational agency is required to convene a meeting with the parents and the relevant members of the Individualized Education Program 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).[1]) 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).) 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.

[1] All subsequent references to the Code of Federal Regulations are to the 2006 version.

(34 C.F.R. § 300.510(b)(3).) If the Local Education Agency 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).)

An amended complaint may be filed when either (a) the other party consents in writing and is given the opportunity to resolve the complaint through a resolution session, or (b) the hearing officer grants permission, provided the hearing officer may grant such permission at any time more than five (5) days prior to the due process hearing. (20 U.S.C. §1415(c)(2)(E)(i).) The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. §1415(c)(2)(E)(ii).)

Education Code section 56041.5 provides:

> When an individual with exceptional needs reaches the age of 18, with the exception of an individual who has been determined to be incompetent under state law, the local educational agency shall provide any notice of procedural safeguards required by this part to both the individual and the parents of the individual. All other rights accorded to a parent under this part shall transfer to the individual with exceptional needs. The local educational agency shall notify the individual and the parent of the transfer of rights.

DISCUSSION

District's motion, supported by sworn declaration of District's Director of Special Youth Services, establishes that Parents agreed to attend a scheduled mandatory resolution session, but did not attend or make a request to reschedule. Although no evidence was submitted of District attempts to reschedule with Parents, the declaration states that Parents have established a pattern of failing to attend or reschedule meetings with District.

Parents are required to participate in a resolution session before a due process hearing may be commenced, and OAH has discretion to dismiss the matter if Parents refuse to participate in a resolution session and District provides appropriate documentation supporting a motion to dismiss. Here, there has been no agreement to waive the resolution session in this case. District brought a motion to vacate dates and extend procedural timelines before expiration of the resolution period, and seeks an extension of dates, rather than dismissal. Accordingly, District's motion to vacate the currently scheduled dates and extend procedural timelines is granted.

Student has failed respond to District's motion, and has not provided OAH with an adequate reason for failing to participate in a resolution session within 30 days. Instead, Student seeks to amend his complaint to allege that Parents are not required to participate in a mandatory resolution session. Although the motion to amend is timely, both the original and amended complaint fail to allege who holds Student's educational rights, or whether Parents possess the authority to pursue a due process hearing on Student's behalf.

Previous complaints filed by Parents on behalf of Student have established that Student is over 18 years of age. In March 2017, OAH issued an Order to Show Cause in another matter for Parents to provide proof that they possessed Student's educational rights in order to proceed with a due process claim on behalf of Student. (*Student v. Torrance Unified School District* (March 16, 2017) Cal.Off.Admin.Hrngs. Case No. 2016100629, Order to Show Cause.) That Order further stated that "Parents are not permitted to file a hearing request on behalf of Student unless they possess his educational rights either through a transfer or obtaining conservatorship over Student." In response, Parents requested dismissal of that action, and filed this complaint against District.

Because Parents have been ordered not to file for due process with OAH on Student's behalf unless they provide proof that they possess educational rights, Parent's request to amend the complaint on Student's behalf is denied. Parents are ordered to provide proof that they hold Student's educational rights to District at the mandatory resolution meeting, or District may move for dismissal of this complaint for failure to do so.

ORDER

1. District's motion to vacate dates and extend procedural deadlines is granted.

2. All previously set dates in this matter are vacated.

3. The parties are ordered to participate in a resolution session within 15 business days from the date of this order. District shall schedule the resolution session within three business days of this order.

4. The timelines for hearing established pursuant to title 20 United States Code section 1415(f)(1)(B) shall recommence on October 9, 2017.

5. Student's request to amend his complaint is denied.

6. Parents are ordered to provide District with documentation that they possess Student's educational rights at the resolution session; failure to produce such documentation will cause OAH to dismiss this matter.

DATE: October 9, 2017

DocuSigned by:
Alexa Hohensee
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ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings