BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

ANAHEIM UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2021040540

ORDER DENYING MOTION TO DISMISS

MAY 18, 2021

On April 15, 2021, Parents on behalf of Student filed a due process hearing request with the Office of Administrative Hearings, called OAH, naming Anaheim Union High School District as respondent.

On May 11 2021, Anaheim Union High School District, called Anaheim Union, filed a motion to dismiss the due process complaint alleging that Student's advocate provided legal representation and engaged in the unauthorized practice of law at the April 29, 2021, resolution session in violation of the Individuals with Disabilities Act, called IDEA, and California State Bar Act. Additionally, Anaheim Union claimed that Parent did not participate in good faith and failed to discuss the due process complaint

and the facts that form the basis of the complaint in violation of the IDEA. Thus, Anaheim Union requested dismissal of this matter.

On May 14, 2021, Student filed opposition to Anaheim Union's motion to dismiss arguing that Parent attended and participated in the resolution session. Further, Student requested sanctions for filing a frivolous motion and acting in bad faith.

On May 17, 2021, Anaheim Union filed a reply and requested dismissal or in the alternative, an order for a new resolution session.

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 purpose of the resolution session is to permit the parents of the child with special needs to discuss their complaint and permit the school district to resolve the matter. (20 U.S.C. § 1415(f)(1)(B)(i)(IV) 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).)

DISCUSSION

Here, Anaheim Union asserted two separate grounds to dismiss this matter. First, Anaheim Union argued that the advocate engaged in the unauthorized practice of law at the resolution session and failed to notify the school district that Student would be legally represented. Additionally, Anaheim Union complained of the advocate's alleged

employment status with Student's attorney and the advocate's published statements regarding representation and advisement of parents. Student disagrees.

The purpose of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education", and to protect the rights of those children and their parents. (20 U.S.C.§ 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

Anaheim Union's allegations regarding the advocate's unauthorized practice of law is outside of OAH's jurisdiction and must be adjudicated in a different venue. Thus, the argument fails.

Second, Anaheim Union maintained that the advocate's participation during the meeting obstructed Parent's participation and amounted to a lack of good faith parental participation at the resolution session. Conversely, Student argued that it was Anaheim Union that failed to participate in the resolution session because it failed to make an offer to Student.

The parties factual dispute regarding what transpired at the resolution session does need not be decided because the parties agree that a resolution session was held for 30 minutes on April 29, 2021. Under Code of Federal Regulations, 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).) Here, there is no dispute that Parent attended the resolution session. And, Anaheim Union failed to provide any authority that an advocate's participation at the resolution session amounts to parent non-participation, and that this further extends to parent non-attendance. Thus, Anaheim Union failed to meet its burden to dismiss this matter.

Additionally, Anaheim Union requested in its reply that in the alternative to dismissal, a new resolution session should be ordered. Anaheim Union failed to include this request in its moving papers and thus it will not be considered as Student was not given appropriate notice regarding this request.

Student requested sanctions in the opposition papers. Student failed to file a separate motion for sanctions in violation of Code of Civil Procedure section 128.5 subd. (f)(1)(A). It is not appropriate to seek sanctions in response to an entirely different motion. Thus, Student's request for sanctions will not be addressed.

Accordingly, Anaheim Union's motion to dismiss this matter is denied.

IT IS SO ORDERED

Cynthia Fritz

Cynthia Fritz

Administrative Law Judge

Office of Administrative Hearings