BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS ON BEHALF OF STUDENT, v. LAS LOMITAS ELEMENTARY SCHOOL DISTRICT AND SEQUOIA UNION HIGH SCHOOL DISTRICT.	OAH Case No. 2017050461 ORDER DENYING LAS LOMITAS ELEMENTARY SCHOOL DISTRICT'S MOTION FOR A RULING ON ITS NOTICE OF JOINDER AS MOOT; ORDER DENYING WITHOUT PREJUDICE LAS LOMITAS ELEMENTARY SCHOOL DISTRICT'S MOTION TO DISMISS

PROCEDURAL HISTORY

On May 9, 2017, Student filed a Request for Due Process Hearing (complaint) with the Office of Administrative Hearings, naming Las Lomitas Elementary School District, Sequoia Union High School District, and San Mateo County Special Education Local Plan Area.

On May 16, 2017, Sequoia Union filed a motion to dismiss Student's complaint in its entirety. Sequoia Union moved to dismiss Student's claims arising under the Individuals with Disabilities Education Act on the basis that they were not ripe, and to dismiss all of Student's other claims on the basis that OAH does not have jurisdiction over claims arising under the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, Government Code section 11135, the Unruh Civil Rights Act (Civil Code, § 51, et seq.), and California Civil Code sections 54 and 54.1.

On May 17, 2017, Las Lomitas attempted to file a joint pleading in which it gave notice of its joinder to Sequoia's motion to dismiss Student's complaint and moved to dismiss Student's complaint based upon its contention that the complaint fails to contain any allegations as to Las Lomitas. Las Lomitas attempted to fax its pleadings to OAH, but the fax was never received.

On May 31, 2017, OAH issued an order which, partially granted and partially denied Sequoia Union's motion to dismiss.[1] OAH dismissed all allegations of Student's complaint alleging violation of Americans with Disability Act (ADA) (Title 42 U.S.C. §§ 1201, et seq.), Section 504 of the Rehabilitation Act of 1973 (Section 504) (29 U.S.C. § 701 et seq.), and the Unruh Civil Rights Act (Civ. Code, § 51, et seq.).

On June 1, 2017, Las Lomitas filed a request for ruling on its notice of joinder and on its unfiled motion to dismiss. Las Lomitas stated that it did not discover until June 1, 2017, that OAH had not received its faxed pleading, which the other parties to this action received on May 17, 2017. Las Lomitas attached a copy of the pleading it had attempted to file on May 17, 2017, as an exhibit to its motion for decision. Las Lomitas has not filed a new motion to dismiss. Student filed an opposition to Las Lomitas's motions for rulings on June 5, 2017.

DISCUSSION AND ORDER

OAH dismissed allegations 3 through 7 of Student's complaint on May 31, 2017, since they were beyond OAH's jurisdiction. Las Lomitas's request for joinder in Sequoia's motion to dismiss Student's ADA, Section 504, and Unruh Act claims is therefore moot, and is denied on that ground.

Las Lomitas's request for a ruling on its motion to dismiss is denied without prejudice. Las Lomitas states that it realized that its fax to OAH on May 17, 2017, did not go through. Rather than re-filing its motion, Las Lomitas has attached it as an exhibit to its motion for ruling. Once Las Lomitas realized that it had not properly filed its original motion, it should have re-filed it. Since its motion to dismiss has never been properly filed with OAH, Las Lomitas's motion for ruling is denied without prejudice to Las Lomitas properly filing the motion with OAH and serving it on the remaining parties to this case.

ORDER

1. Las Lomitas's motion for a ruling on its notice of joinder is denied as moot.

[1] OAH's order also dismissed San Mateo County, which had separately filed a motion to dismiss on May 15, 2017.

2. Las Lomitas's motion for a ruling on its motion to dismiss is denied without prejudice to Las Lomitas properly filing and serving the motion.

DATE: June 12, 2017

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