BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH CASE NO. 2010061139
v.	
FOLSOM CORDOVA UNIFIED SCHOOL DISTRICT.	ORDER GRANTING MOTION TO DISMISS

On June 25, 2010, Parent filed with the Office of Administrative Hearings (OAH) a Due Process Hearing Request (complaint) on behalf of Student against the Folsom Cordova Unified School District (District).

On September 1, 2010, Cher Koleszar, Director of the Special Education Local Plan Area and Student Support Services, filed a motion to dismiss on behalf of District because Parent failed to participate in a mandatory resolution session. OAH has received no response from Student.

APPLICABLE LAW

A local educational agency (LEA) is required to convene a resolution meeting with the parents and the relevant members of the Individualized Education Program (IEP) team within 15 days of receiving notice of the Student's complaint. (20 U.S.C. § 1415(f)(1)(B)(i)(I);[1] 34 C.F.R. § 300.510(a)(1) (2006).) The resolution session need not be held if it is waived by both parties in writing or the parties agree to use mediation. (§ 1415(f)(1)(B)(i)(IV); 34 C.F.R. § 300.510(a)(3) (2006).) There are no provisions of law that allow a parent or an LEA to unilaterally waive the resolution meeting. (71 Fed. Reg. 47602, No. 156 (Aug. 14, 2006.)

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. (34 C.F.R. § 300.510(b)(3) (2006).) If the LEA 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 an administrative law judge dismiss the complaint. (34 C.F.R. § 300.510(b)(4) (2006).)

DISCUSSION

On August 17, 2010, Cher Koleszar, Director of the Special Education Local Plan Area and Student Support Services, filed on behalf of District a motion to dismiss due to Parent's failure to participate in a mandatory resolution session. Student filed no response. The next day, August 18, 2010, Parent did attend a telephonic prehearing conference on Student's behalf.

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[1] All statutory citations are to Title 20 United States Code unless otherwise indicated.

Administrative Law Judge (ALJ) Adeniyi Ayoade conducted the prehearing conference and heard the motion to dismiss on August 18, 2010. The ALJ found that the District offered to hold a resolution session and made reasonable efforts to schedule the resolution session at a time convenient for Parent. However, the ALJ denied District's motion to dismiss, without prejudice, based on Parent's explanation that she was not aware that the resolution session was required by law.

The ALJ then ordered that the parties participate in a resolution session by Tuesday, August 31, 2010. The order specified that prior to 5:00 p.m., August 23, 2010, Parent shall provide District with dates and time between August 18, 2010, and August 31, 2010, when she is available to participate in a resolution session. In the alternative the parties could, by mutual agreement, waive the resolution session or utilize mediation. The order further stated that if Parent fails to participate in a resolution session, District may resubmit a motion to dismiss.

Based on a sworn declaration, District established that prior to the prehearing conference on August 18, 2010, District made a total of eight telephone calls to Parent between June 29, 2010, and August 4, 2010. On one occasion, Parent agreed to participate in a resolution session on August 2, 2010, but Parent did not attend. After the ALJ's order of August 19, 2010, District personnel continued to call and leave voicemails for Parent. District sent a letter to Parent on August 20, 2010, offering to schedule a resolution session on August 23, 2010. Parent did not respond to the voicemails or to the letter. Parent's advocate contacted District on August 27, 2010, and scheduled a resolution session for August 31, 2010. Parent later cancelled the August 31, 2010 resolution session.

There has been no agreement to waive the resolution session or proceed to mediation in lieu of the resolution session.[2] Further, the District has established that it made reasonable efforts to obtain Student's parent's participation in a resolution session prior to filing its motion to dismiss, and it documented those reasonable efforts in its motion to dismiss. Student has failed respond to District's motion to dismiss and Student has not provided OAH with an adequate reason for failing to obey the August 19, 2010 order. Therefore, District's motion to dismiss Student's complaint is granted.

ORDER

District's motion to dismiss is granted, and the matter is dismissed.

IT IS SO ORDERED.

Dated: September 8, 2010

/s/

MICHAEL G. BARTH
Administrative Law Judge
Office of Administrative Hearings

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[2] Parent filed this as a hearing-only case.