

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ORANGE UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2011080016

ORDER GRANTING MOTION TO
DISMISS COMPLAINT FOR FAILURE
TO PARTICIPATE IN A
MANDATORY RESOLUTION
SESSION

On July 29, 2011, Student filed with the Office of Administrative Hearings (OAH) a due process hearing request (complaint) naming Orange Unified School District (District) as the respondent.

On August 24, 2011, District filed a motion to dismiss due to Student's parent's non-participation in a mandatory resolution session. OAH has received no response from Student to District's motion to dismiss.

APPLICABLE LAW

A local educational agency (LEA) is required to convene a 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); 34 C.F.R. § 300.510(a)(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. (34 C.F.R. § 300.510(b)(3).) 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 hearing officer dismiss the complaint. (34 C.F.R. § 300.510(b)(4).)

DISCUSSION

District's motion, supported by sworn declaration of Attorney Adam Newman, indicates that Student's parent did not attend the resolution session scheduled for August 19, 2011. Attorney Newman's declaration is supported by documents establishing District's reasonable efforts to secure parent's participation in a resolution session.

On August 10, 2011, District gave written notice of the resolution session scheduled for August 19, 2011 at 9:30 a.m. at District's Special Education Office. The notice requested parent respond to confirm attendance by August 16, 2011. Parent's attorney responded by letter dated August 16, 2011 informing District that parent would not attend the resolution session. Parent's attorney gave no reason or further explanation of Parent's refusal to attend a resolution session.

On August 17, 2011 District's attorney spoke with an advocate from Parent's attorney's office to ascertain whether Parent desired to reschedule the resolution session or was planning not to attend. The advocate informed District's attorney that Parent was not going to attend the resolution session. On August 17, 2011 District filed a Notice of Resolution Outcome in which District confirmed it received the complaint on August 2, 2011, indicated that there was no mutual waiver of resolution, and that Parent would not participate in the resolution session scheduled for August 19, 2011.

Student's parent is required to participate in a resolution session before a due process hearing may be commenced, and OAH has discretion to dismiss the matter 30 days after the date of filing if the parent refuses to participate in a resolution session and the district provides appropriate documentation supporting its motion to dismiss.

There has been no agreement to waive the resolution or proceed to mediation in lieu of the resolution session in this case. Moreover, 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 participate in a resolution session within 30 days. Therefore, District's motion to dismiss Student's complaint is granted.

ORDER

1. District's motion to dismiss is granted.
2. All dates are vacated and the matter will be closed.

Dated: August 29, 2011

/s/

STELLA OWENS-MURRELL
Administrative Law Judge
Office of Administrative Hearings