

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FAIRFIELD SUISUN UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012040652

ORDER DENYING MOTION TO
DISMISS WITHOUT PREJUDICE AND
VACATING DATES

On May 16, 2012, Parent, on behalf of Student, filed a first amended due process hearing request (complaint) in this matter against the Fairfield-Suisun Unified School District (District). On August 15, 2012, the District filed a motion to dismiss the matter due to Parent's refusal to participate in a mandatory resolution session. Student has not filed a response to the motion.

APPLICABLE LAW

A local educational agency (LEA) is required to convene a resolution session with the parents and the relevant members of the individualized education program (IEP) team within 15 days of receiving notice of a 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 if 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 to do so 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

There has been no agreement to waive the resolution or proceed to mediation in lieu of the resolution session in this case. The District's motion to dismiss is supported by the declaration of Andrew Green-Ownby, the District's Executive Director of Special Education, which establishes that the District has made reasonable efforts to obtain Parent's attendance at a resolution session. On May 21, 2012, the District wrote to Parent proposing a resolution

¹ All further references to the Code of Federal Regulations herein are to the regulations promulgated in 2006.

session on May 29, 2012, and Parent did not respond. On June 1, 2012, the District wrote again to Parent, proposing a resolution session on June 8, 2012, and again Parent did not respond. The District wrote a third time on June 9, 2012, proposing a resolution session on June 14, 2012. Parent then telephoned the District and stated she would not attend a resolution session.

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 if Parent refuses to participate in a resolution session. Since Parent is appearing without an attorney or representative, it may be that she does not realize the law requires her attendance at a resolution session. The motion to dismiss will therefore be denied without prejudice so that Parent may have another opportunity to attend a resolution session. If she does not do so, the District may renew its motion to dismiss.

ORDER

1. The District's motion to dismiss is denied without prejudice.
2. The parties are ordered to attend and participate in good faith in a resolution session within 30 days of the date of this Order. The District shall propose a date and time for the resolution session within three business days of the date of this Order. The parties shall cooperate in agreeing on a date and time for the resolution session.
3. All previously scheduled dates are vacated, including the prehearing conference scheduled for August 27, 2012. The procedural timelines are reset as of the date of this Order.
4. If after 30 days Parent does not attend and participate in good faith in a resolution session, and the District makes and documents reasonable efforts to obtain her attendance, the District may renew its motion to dismiss.

IT IS SO ORDERED.

Dated: August 27, 2012

/s/

CHARLES MARSON
Administrative Law Judge
Office of Administrative Hearings