

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SANTA ROSA CITY SCHOOLS.

OAH CASE NO. 2012110693

ORDER DENYING DISTRICT'S  
MOTION TO DISMISS

On November 26, 2012, Parent filed with the Office of Administrative Hearings (OAH) a due process hearing request (complaint) on behalf of Student naming Santa Rosa City Schools (District) as the respondent. District filed a notice of insufficiency (NOI), and in an order dated November 28, 2012, OAH found the complaint insufficient and granted Student 14 days leave to amend

On November 11, 2012, attorney Brett Allen timely filed an amended complaint on behalf of Student.

On December 21, 2012, Santa Rosa City Schools (District) filed a motion to dismiss Student's complaint due to Parent's non-participation in a mandatory resolution session. On December 27, 2012, Student filed an opposition.

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 submits the declaration of attorney Carl Corbin, stating that he sent left a voicemail message for Student's counsel on December 14, 2012 requesting that Mr. Allen

contact him, and on the same day mailed a letter unilaterally setting the mandatory resolution session for Friday, December 21, 2012 at 1:00 pm. This motion was filed at 2:13 pm on Friday, December 21, 2012 when Parent did not attend the resolution session.

In his opposition letter, Student's counsel, Mr. Allen, indicates that he was inadvertently unaware of the scheduled mediation session, and states that his client will attend the mandatory resolution session. He also states that he called Mr. Corbin on December 27, 2012, to schedule a resolution session, but was informed that Mr. Corbin will be out of the office until January 2, 2013.

Student's parent is required to participate in a resolution session before a due process hearing may be commenced, and OAH has discretion, after 30 days from the filing of the complaint, to dismiss the matter if the parent refuses to participate in a resolution session and the district provides appropriate documentation supporting its motion to dismiss. Here, the motion to dismiss was filed December 21, 2012, only ten days after the amended pleading was filed on December 11, 2012, and seven days after the resolution session was proposed on December 14, 2012, rendering the motion premature.

District has also failed to establish that it made reasonable efforts to obtain Parent's participation. District set the resolution session unilaterally, on a Friday afternoon before a major holiday weekend, without more than one call and letter to Student's counsel a week before the scheduled session, and with no attempt to contact counsel thereafter. The filing of a fully drafted motion, supported by a declaration and exhibits, one hour after parent failed to appear demonstrates that District devoted its time and efforts to procedural gamesmanship, rather than to making repeated and reasonable attempts to telephone opposing counsel and arrange parental participation in the resolution process. District's one call and letter, in one day, falls far short of documenting a period of reasonable efforts as required to warrant dismissal of Student's complaint for refusal to participate in a mandatory resolution session.

#### ORDER

1. District's motion to dismiss is denied.
2. The parties are ordered to participate in a resolution session within 15 business days of the date of this order.
3. All previously scheduled dates shall remain on calendar.

Dated: December 28, 2012

/s/  
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ALEXA HOHENSEE  
Administrative Law Judge  
Office of Administrative Hearings