

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL  
DISTRICT; LOS ANGELES COUNTY  
OFFICE OF EDUCATION.

OAH CASE NO. 2012120567

ORDER DENYING LACOE'S MOTION  
TO DISMISS

On December 17, 2012, Student's parent on behalf of Student (Student) filed with the Office of Administrative Hearings (OAH) a due process hearing request (complaint) naming the Los Angeles Unified School District (District) as the respondent. On February 8, 2013, Student filed an amended complaint adding the Los Angeles County Office of Education (LACOE) as a respondent.

On March 27, 2013, LACOE filed a motion to dismiss Student's complaint due to Student's parent's non-participation in a mandatory resolution session. On April 2, 2013, Student filed an opposition to the motion.

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

LACOE claims that it attempted to hold a resolution session three times, but Student's parent did not attend. According to LACOE's moving papers, all three notices were sent to Student's parent in English. The Declaration of Lupe Farrell filed in support of LACOE's

motion states that all conversations she had with Student's parent were in Spanish and that Student's parent told Ms. Farrell that Student's parent could read "some English." Student's opposition confirms that LACOE was aware that Spanish was the primary language of Student's parent.

According to LACOE's papers, the first resolution session was noticed for February 14, 2013, at a location in Downey. After Student's parent did not attend the session, Ms. Farrell contacted her and spoke with her in Spanish. Student's parent told Ms. Farrell that the location was too far away for her to attend.

LACOE then sent a second notice (written in English) for a resolution session at the same location in Downey. Not surprisingly, Student's parent did not attend that session, once again explaining that Downey was too far.

By a letter written in English dated March 11, 2013, LACOE noticed another resolution session for March 19, 2013, at a location closer to Student's home. Student's parent explained that she could not attend because she could not get child care that day.

LACOE's moving papers state: "On March 22, 2013, Student's counsel informed LACOE's counsel that she now has contact with the parent and can schedule a resolution session." However, LACOE apparently declined that offer and filed this motion to dismiss instead.

LACOE has failed to establish that it made reasonable efforts to obtain Student's parent's participation in the resolution session. All three notices were sent in English although LACOE had actual knowledge that Student's parent had limited proficiency in written English. After learning that Downey was too far for Student's parent to travel, LACOE inexplicably noticed the second meeting for that same location. LACOE turned down Student's counsel's March 22, 2013 offer to meet for resolution, even though that offer came only days after the third scheduled meeting date.

LACOE's motion to dismiss is denied. All dates remain on calendar as currently set.

IT IS SO ORDERED.

Dated: April 4, 2013

/s/

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SUSAN RUFF  
Administrative Law Judge  
Office of Administrative Hearings