

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

ELK GROVE UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2009060162

ORDER GRANTING DISTRICT'S  
MOTION TO DISMISS

Student filed an amended due process hearing request (complaint) on August 28, 2009, which names Elk Grove Unified School District (District) as respondent. A scheduling order set a mediation for October 7, 2009, a prehearing for October 19, 2009 and a hearing date of October 27, 2009.

On October 8, 2009, Student filed a motion to continue the prehearing and hearing dates based upon the need to prepare for additional concerns and in order to subpoena additional witnesses. On October 14, 2009, District filed its opposition to the continuance and motion to dismiss. The essence of its motion to dismiss is that Student has failed to participate in the resolution session which has not been waived despite the District having made reasonable efforts to contact Student and scheduled the resolution session. An amended complaint serves to restart all applicable time frames including those for resolution session.

On October 14, 2009, rather than dismiss the case, OAH issued an Order directing that the parties participate in a resolution session prior to October 30, 2009. That order set a status conference for November 2, 2009 at 10:00AM so that the parties could report on the session. If a resolution session had occurred new hearing dates would be set. If the session did not occur, the case would be dismissed.

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

Here the parties agreed on a date to hold the resolution session and parent did show up at the appointed time. Due to disagreements concerning who was eligible and/or who should attend the session, the parent declined to enter the conference room and actually participate in the resolution session. Parent is required to participate in a resolution session before the commencement of a due process hearing. Since parent did not participate in the resolution session, the District's motion to dismiss is granted and the matter is dismissed

#### ORDER

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

Dated: November 02, 2009

/s/

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ANN F. MACMURRAY  
Presiding Administrative Law Judge  
Office of Administrative Hearings