

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

BONITA UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2010080121

ORDER GRANTING MOTION TO
DISMISS

On August 03, 2010, Jillian Bonnington, advocate, filed a due process hearing request (complaint) with the Office of Administrative Hearings (OAH) on behalf of Student (Student) naming Bonita Unified School District (District) as the respondent.

On September 7, 2010, Deborah Cesario, attorney for the District, filed a motion to dismiss Student's complaint due to Student's parent's non-participation in a mandatory resolution session. OAH has received no response from Student or his advocate.

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

The District's motion, supported by sworn declarations of District staff members, Linda Chute and Laurie Wellner, and Deborah Cesario, attorney for the District, indicate that neither Student's parent(s) nor Student's advocate attended the resolution session scheduled for August 13, 2010. While it is noted that Ms. Bonnington was hospitalized for six days in August 2010, the District made several attempts to reschedule the early resolution session with Ms. Bonnington's protégé, Mr. Jon Runner, Educational Advocate, as well as

requesting that parent attend the resolution session on their own. Student did not successfully reschedule nor attend a resolution session

The District filed its motion after the end of the 30-day resolution period, which dates from the filing of Student's complaint.

No opposition or response has been filed on behalf of Student.

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 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. Therefore, the District's motion to dismiss Student's complaint is granted.

The District has also requested that Student and his advocate be ordered to pay the District's expenses, including attorney's fees, incurred by the District as a result of their bad faith actions. The District acknowledges that Student's advocate, Ms. Bonnington, was hospitalized during the month of August 2010. While Ms. Bonnington's failure to communicate with the District, as requested, did create additional work for counsel, it does not rise to the level of bad faith where Ms. Bonnington is ill and hospitalized, and the District knows it. The District's request for attorney's fees and expenses is denied.

ORDER

1. Bonita Unified School District's motion to dismiss is granted, and the matter is dismissed without prejudice.
2. The District's request for expenses and attorneys fees is denied.

IT IS SO ORDERED.

Dated: September 13, 2010

/s/

JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings