

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN FRANCISCO UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2010100312

ORDER DENYING WITHOUT  
PREJUDICE DISTRICT'S MOTION TO  
DISMISS STUDENT'S COMPLAINT  
FOR FAILURE TO PARTICIPATE IN  
RESOLUTION SESSION

Student filed an amended due process hearing request (complaint) with the Office of Administrative Hearings (OAH) on November 3, 2010, against the San Francisco Unified School District (District). Student had served the amended complaint on the District on October 30, 2010. On November 29, 2010, the District timely filed a motion to dismiss Student's complaint due to the failure of Student's Mother to participate in a mandatory resolution session. The District's motion included declarations from its legal counsel and its Special Education Ombudsperson detailing the District's efforts to obtain Mother's participation in a resolution session, first after the filing of Student's original complaint and then after Student filed his amended complaint. The declarations state that the District attempted to contact Mother by letter and by telephone but that Mother has not agreed to participate in the resolution process.

On December 2, 2010, Mother filed a response to the District's motion to dismiss. In her response, she acknowledges that she does not wish to participate in the resolution process for two reasons. First, Mother explains that she has not been able to resolve her disagreements with the District through the individualized education program team meeting process. Second, she states that she does not believe it necessary to attend a resolution session with the District since she asserts the District is in violation of special education laws and should be held accountable for the alleged violations.

APPLICABLE LAW

A local educational agency (LEA) is required to convene a resolution 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. (Title 20 U.S.C. § 1415(f)(1)(B)(i)(I);<sup>1</sup> 34 C.F.R. § 300.510(a)(1) (2006).) The resolution session need not be held if it is waived by both parties in writing or the parties agree to use mediation. (§

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<sup>1</sup> All statutory citations are to Title 20 United States Code unless otherwise indicated.

1415(f)(1)(B)(i)(IV); 34 C.F.R. § 300.510(a)(3) (2006).) There are no provisions of law that allow a parent or an LEA to unilaterally waive the resolution meeting. (71 Fed. Reg. 47602, No. 156 (Aug. 14, 2006.)

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) (2006).) 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) (2006).)

## DISCUSSION

The District's motion is supported by sworn declarations demonstrating the numerous attempts it has made to obtain Mother's participation in the mandatory resolution process. Mother has failed to respond to the letters and telephone calls informing her of the resolution sessions and has failed to appear on the dates scheduled or to contact the District to arrange alternative dates that would be more convenient for her. Additionally, Mother's response indicates that she does not believe it necessary to engage in the resolution process as she believes that the District has violated Student's rights and because she has not been able to resolve her disagreements with the District concerning Student's educational issues.

However, although Mother may not believe that the resolution process will be fruitful, the law requires her to participate in a resolution session before a due process hearing may be commenced. 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.

In this case, the parties have not agreed to waive the resolution session or to proceed to mediation in lieu of the resolution session. Further, the District has established that it made reasonable efforts to obtain Mother's participation in a resolution session prior to filing its motion to dismiss, and it documented those reasonable efforts in its motion through the declarations of the District's counsel and its Special Education Ombudsperson. The District attempted to schedule a session after Student filed his original complaint and has made extensive efforts to obtain Mother's participation since the filing of Student's amended complaint, but was not successful.

Additionally, Mother has not offered a justifiable reason for failing to participate in the resolution process with the District. Although she may not believe that their efforts will result in a resolution, it is still a mandatory requirement that she participate in a resolution session. As discussed above, federal law makes a resolution session a prerequisite to a due process hearing in order to encourage parties to informally resolve their disputes. However, because Mother is appearing without benefit of legal counsel and may not be fully aware of the requirement to attend a resolution session, and in order to affect the spirit of the Individuals with Disabilities Education Act, Student's Mother shall be given an opportunity

to attend a resolution session prior to OAH dismissing this case. The resolution session shall be held no later than December 17, 2010. Should Student's Mother fail to attend the resolution session, the matter shall be dismissed. Since Student's Mother has filed this case without the participation of Student's Father, Mother must attend the resolution session. The District shall make every reasonable effort to schedule the resolution session to accommodate Mother's schedule. Should Student's Mother fail to attend a resolution session by December 17, 2010, the matter will be dismissed.

The current prehearing and hearing dates are vacated and replaced by a resolution session. The parties shall then attend a status conference/trial setting conference on December 22, 2010, at 10:00 a.m. at which time the parties shall report on whether the resolution session occurred. If a resolution session occurred, the parties shall be prepared to discuss mutually agreeable prehearing conference and due process hearing dates.

#### ORDER

1. This matter will be dismissed unless Student attends a resolution session on or before December 17, 2010, at the District's offices. No requests for continuances or postponement of this date will be entertained.
2. The previous prehearing and hearing date are vacated. The parties shall participate in a telephonic status conference/trial setting conference on December 22, 2010, at 10:00 a.m. If Student's Mother has failed to participate in the resolution session as ordered, the matter will be dismissed at that time. If Student's Mother participated in the resolution session, the parties shall report the date of that the resolution session occurred and they shall also be prepared to discuss mutually agreeable dates for a prehearing conference and hearing dates. The parties may also request a mediation date at that time if they desire.
3. Should Student's Mother attend the resolution session, the timelines for hearing and decision shall be calculated from that date pursuant to Title 20 United States Code section 1415(f)(1)(B).

4. The District's motion to dismiss is denied without prejudice. This case will be dismissed at the status conference on December 22, 2010, if Student's Mother has not participated in a resolution session regarding this case by that time.

Dated: December 3, 2010

/s/

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DARRELL LEPKOWSKY  
Administrative Law Judge  
Office of Administrative Hearings