

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SANTA MONICA-MALIBU UNIFIED  
SCHOOL DISTRICT.

OAH CASE NO. 2010110703

ORDER DENYING DISTRICT'S  
MOTION TO DISMISS

On December 15, 2010, Student filed an amended complaint for due process (complaint), naming District as respondent. On January 27, 2011, District filed a motion to dismiss the complaint on the ground that Student's mother's (Mother) did not participate in a mandatory resolution session. Student filed an opposition to District's motion to dismiss on January 31, 2011. District filed its reply on February 1, 2001. For the reasons discussed below, District's motion to dismiss is denied.

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).) 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's motion is supported by a sworn declaration from District's special education director, Dr. Sara Wolverton (Dr. Wolverton). Student's opposition is supported by a sworn declaration from Mother. The parties agree that District convened a mandatory resolution session on January 3, 2011, that Dr. Wolverton and Student's case manager attended for District and that Mother and a family friend attended for Student.

District contends that Wolverton made numerous attempts during the resolution session to discuss with Mother the issues and proposed resolutions in the complaint; that Mother participated in the meeting only to the extent of making an unwavering demand for

resolution that exceeded the proposed resolutions sought by Student's complaint; that Mother's demand sought an unspecified amount of services which would begin after Student's graduation from high school; and that Mother's refusal to negotiate her demand for services in good faith deprived District of the opportunity to attempt to resolve the matter. District argues that Parents did not "participate" in the mandatory resolution session because Mother's demand was unwavering, and therefore Student's case should be dismissed, or, alternatively, OAH should order Parents to participate in another resolution session as a condition to proceeding to hearing.

Student contends that District did not have all relevant members of Student's individualized education plan (IEP) team present at the resolution session as required by Education Code §56501.5; that Mother responded to Wolverton's questions; that Mother explained her concerns about Student's academic progress; that she wanted Student to work with an education therapist to bring her to grade level in academics; that she was concerned that Student would not reach grade level by her graduation in June of 2011; and that she could not quantify the number of hours needed to bring Student to grade level, as it might require services beyond Student's graduation based on Student's present school schedule and work load.

Both declarations were credible. However, Mother's declaration established that she attended the resolution session, actively discussed the facts supporting Student's amended complaint, expressed her concerns about Student's academic progress to Dr. Wolverton, and she proposed a solution that she would accept to resolve the complaint. District was aware of the facts underlying Mother's concerns, and had the opportunity to resolve the dispute forming the basis for Student's complaint, notwithstanding Mother's firm position on her proposed remedy.

While District argues that Mother's unwavering demand impeded District's ability to entertain the possibility of an agreement, IDEA does not require that Parents do any more than they did here. Based upon the evidence offered by both parties, Parents met their obligation to participate in a mandatory resolution session, such that District's motion must be denied.

## ORDER

District's motion to dismiss is denied. All dates remain as scheduled.

Dated: February 07, 2011

/s/

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ADRIENNE L. KRIKORIAN  
Administrative Law Judge  
Office of Administrative Hearings