

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

DOWNEY UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2013070920

ORDER GRANTING MOTION TO
DISMISS AND DENYING MOTION
TO SHIFT COSTS

Student filed an amended complaint on August 20, 2013. On November 13, 2013, District filed a motion to dismiss Student's complaint and for an order shifting costs. District contends that Student's parent did not participate in an early resolution session, and that District has made multiple unsuccessful attempts to schedule a resolution session. The matter is set for a prehearing conference on November 22, 2013 and a hearing on December 4, 2013. Attorney Nicole Hodge Amey filed an opposition to the motion to dismiss and shift costs on Student's behalf on November 18, 2013.

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).)

In other words, OAH has discretion to dismiss the matter if the parent refuses or fails to participate in a resolution session, no agreement exists to proceed to mediation in lieu of a resolution session, and the District provides appropriate documentation supporting its motion to dismiss. Here, District filed its motion, supported by authenticated evidence, almost ninety days after the end of the 30-day resolution period. No dispute exists that a resolution session did not take place as required under the IDEA or that no waiver or agreement to mediate in lieu of a resolution session exists. Although the parties have not clearly established who the educational rights holder is in this case, the evidence does support a finding that Student, who is still a minor, does not hold educational rights. Therefore, the educational rights holder, whether that is the parent or a court appointed adult responsible for Student's educational rights, must participate in a resolution session before this matter goes to hearing. District has established that it made many unsuccessful attempts to schedule a

resolution session with Student's parent over a period of more than sixty days. Student's attorney acknowledges that Student's parent has not responded to her inquiries of status, which is consistent with similar representations by the District.

Student's parent has had ample opportunity to participate in a resolution session and has not done so. Therefore, this matter is dismissed without prejudice, and all dates are vacated.

District also seeks an order shifting the costs that it incurred in attempting to hold a resolution session, which Student's attorney opposes. District did not offer any evidence that Student, or those acting on her behalf, acted in bad faith or otherwise willfully refused to participate in a resolution session. As such, District's motion to shift costs is denied.

IT IS SO ORDERED.

Dated: November 18, 2013

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings