

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MONROVIA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011070792

ORDER DENYING MOTION TO
DISMISS

On July 21, 2011, attorney Keith E. Davis filed with the Office of Administrative Hearings (OAH) a due process hearing request (complaint) on behalf of Parent on behalf of Student (Student) naming the Monrovia Unified School District (District) as the respondent.

On August 24, 2011, Michael K. Jason, Ph.D., the District's special education director, filed on behalf of the District a motion to dismiss due to Student's parent's non-participation in a mandatory resolution session. On August 24, 2011, Student filed an opposition to the District's motion.

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

District's motion, supported by sworn declaration of Dr. Jason, indicates that Student's parent did not attend the resolution session scheduled for August 4, 2011. Parent and the District agreed to reschedule the Resolution Session for August 15, 2011 at 3:00 p.m., and Parent did not attend.

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

Student contends in his opposition that the District failed to demonstrate reasonable efforts to obtain the participation of Parent in a resolution meeting, in that the District had notice that Student was represented by an attorney and failed to communicate through the attorney as directed in the complaint.

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.

District has failed to establish that it made reasonable efforts to obtain Student's parent's participation in the resolution session because it failed to communicate with Student's attorney. Therefore, District's motion to dismiss Student's complaint is denied. A resolution session shall be held within ten (10) business days from the date of this order.

ORDER

1. District's motion to dismiss is denied.
2. The parties are ordered to participate in a resolution session within ten (10) business days of the date of this order.
3. The timelines for hearing established pursuant to Title 20 United States Code section 1415(f)(1)(B) shall recommence on August 25, 2011.

IT IS SO ORDERED.

Dated: August 25, 2011

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings