

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

RIVERSIDE UNIFIED SCHOOL  
DISTRICT, RIVERSIDE COUNTY  
OFFICE OF EDUCATION, AND RIVER  
SPRINGS CHARTER SCHOOL.

OAH CASE NO. 2011080359

ORDER DENYING MOTION TO  
DISMISS

On August 10, 2011, attorney Christian Knox filed a request for Due Process Hearing on behalf of Student, naming Riverside Unified School District (RUSD), Riverside Charter School (Charter), and Riverside County Office of Education (County). On September 26, 2011, attorney Jack Clark filed with the Office of Administrative Hearings (OAH) a motion to dismiss the complaint on behalf of District and County due to Student's parent's non-participation in a mandatory resolution session. Charter's attorney filed a Notice of Joinder and Joinder in the motion to dismiss on September 26, 2011. Attorney Knox filed an opposition on behalf of Student's parents on September 28, 2011. For the reasons discussed below, the motion is denied without prejudice and the timelines in this matter are reset.

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 and County's motion is appropriately supported by a declaration and sufficient documentary evidence that establishes that District has made unsuccessful attempts to hold a resolution session with Student's parent. No evidence was offered that District declined to waive its right to participate in a resolution session.

Student's opposition was also appropriately supported by a declaration under penalty of perjury. Parent's attorney asserts that Parent did not refuse to attend a resolution session on September 20, 2011, but, instead, Student's mother, who is indigent, could not afford gas to drive to the lengthy distance to the location on the date set for the resolution session. Attorney Knox also asserts that the Respondents refused to proceed with the resolution session even though Student's counsel was present and ready to participate. Student's parent is willing to participate in a resolution session.

As discussed above, mandatory participation in a resolution session, in the absence of a mutual waiver, by LEAs and parents or guardians is intended under the IDEA to facilitate early resolution and to avoid further proceedings and expense. The regulations do not provide that an attorney may attend a resolution session in place of parents or guardians. Here, there has not been a mutual waiver of the resolution session. Therefore, although District has shown sufficient reason to dismiss this matter, in order to insure that Student receives an adequate opportunity for due process, the motion will be denied without prejudice. However, all dates will be reset so that parent has a final chance to attend resolution prior to the matter being dismissed.

## ORDER

1. District's motion to dismiss is denied without prejudice to being renewed if Student's parent fails to attend the resolution session consistent with this order.
2. Student's parent shall participate in a resolution session within 15 days of the date of this Order.
3. All previous dates are vacated. All hearing timelines shall be reset effective as of the date of this order. OAH will issue a new scheduling order.

IT IS SO ORDERED.

Dated: September 29, 2011

/s/

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ADRIENNE L. KRIKORIAN  
Administrative Law Judge  
Office of Administrative Hearings