BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

SAN DIEGO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023080528

ORDER GRANTING MOTION TO DISMISS REQUEST FOR DUE PROCESS FOR STUDENT'S FAILURE TO PARTICIPATE IN RESOLUTION SESSION

FEBRUARY 13, 2024

On August 16, 2023, Parent, on behalf of Student, filed a due process hearing request also called a complaint with the Office of Administrative Hearings, called OAH, naming San Diego Unified School District as respondent. The parties joint request to mediate the case was granted on September 21, 2023. Mediation was scheduled for November 7, 2023, with prehearing conference scheduled for December 29, 2023.

On October 23, 2023, Student's attorney withdrew as counsel. Parent cancelled mediation the morning of November 7, 2023.

The prehearing conference in the case proceeded on December 29, 2023. Neither Parent nor an attorney appeared on behalf of Student.

Prior to the prehearing conference, San Diego filed a motion to dismiss the case based on Parent's failure to participate in a mandatory resolution session, recounting efforts from August 2023 to November 7, 2023, attempting to schedule a resolution session. San Diego asserted no written agreement to waive mediation was signed by the parties.

Student did not respond to the motion. Administrative Law Judge Brian Krikorian denied San Diego's motion to dismiss without prejudice, based on the fact that Student was not present at the PHC. However, the Prehearing Conference Order directed Student to attend either a resolution session or mediation by January 31, 2024.

On February 2, 2024, San Diego filed a new motion to dismiss Student's request for due process. OAH did not receive a response to San Diego's second motion to dismiss from Student.

APPLICABLE LAW

A local educational agency is required to meet with the parents and Student's relevant Individualized Education Program team members within 15 days of receiving Student's complaint. (20 U.S.C. § 1415(f)(1)(B)(i)(I); 34 C.F.R. § 300.510(a)(1) (2006). The meeting called a resolution session, can be waived in writing by both parties or if they agree to use mediation. (34 C.F.R. § 300.510(a)(3).) If the parents do not attend the resolution session, and it was not waived, there is no due process hearing until the resolution session waived or held. (34 C.F.R. § 300.510(b)(3).) The respondent can request the case be dismissed after the 30-day period, if it documented reasonable

efforts to hold the resolution session and the parents did not attend. (34 C.F.R. §300.510(b)(4).)

STUDENT HAS FAILED TO PARTICIPATE IN RESOLUTION SESSION

San Diego asserts that that Student has not responded to any efforts to engage in resolution of this case since Student was ordered to attend a resolution session in the Prehearing Conference order. San Diego also asserts the parties did not sign a written waiver of the resolution session.

In a declaration accompanying San Diego's Motion to Dismiss Student's Due Process Request, San Diego's attorney, Juliana Mascari, states she attempted to contact Parent on January 2, 2024, and on January 18, 2024. In each communication she informed Parent that they could jointly waive the resolution session in writing and participate in a mediation if Parent preferred. Parent was asked to suggest dates to meet. Parent did not respond to the messages.

According to San Diego, Parent did not contact San Diego in response to ALJ Krikorian's order requiring her to participate in a resolution session by January 31, 2024. Parent did not file any response to either motion to dismiss stating the information regarding communications related to the San Diego's attempts to schedule a resolution session were inaccurate. Nor did Parent provide any other basis on which it could be determined that dismissal was not warranted for Parent's failure to participate in resolution session as required by the Individuals with Disabilities Education Act and ALJ Krikorian's order.

Parent is required to participate in a resolution session before a due process hearing may be commenced. (34 C.F.R. § 300.510(b)(3).) There was no written agreement to waive the resolution or proceed to mediation in lieu of the resolution

session. Nor was information received from Parent excusing the failure to participate in a resolution session. Respondent established that it made reasonable efforts to obtain parental participation before filing its motion to dismiss. Therefore, San Diego's motion to dismiss is granted.

ORDER

1. San Diego's motion to dismiss is granted.
2. OAH case number 2023080528 is dismissed without prejudice.

IT IS SO ORDERED

Penelope Pahl

Penelope S. Pahl
Administrative Law Judge
Office of Administrative Hearings