BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT

v.

FONTANA UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2022040143

ORDER GRANTING MOTION TO DISMISS FOR FAILURE TO ATTEND RESOLUTION SESSION

MAY 4, 2022

On April 4, 2022, Parent, on behalf of Student, filed with the Office of Administrative Hearings, known as OAH, a due process hearing request naming Fontana Unified School District.

On April 8, 2022, Student filed a motion for stay put, which was denied by OAH by order of April 14, 2022. On April 20, 2022, Fontana filed a motion to dismiss the due process hearing request because of Student's failure to participate in a mandatory resolution session. Student has not filed an opposition to Fontana's motion to dismiss.

APPLICABLE LAW

A local educational agency, referred to as an LEA, is required to convene a meeting with the parents and the relevant members of the Individualized Education Program team within 15 days of receiving notice of a complaint on behalf of a student. (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).)

Fontana's motion is supported by copies of correspondence between the parties and the sworn declaration of Fontana's legal counsel Julie C. Coate. According to Student's proof of service of the due process hearing request, Fontana received Student's complaint on April 4, 2022. The Coate declaration states that Student sent Fontana a signed consent for electronic service by email on April 7, 2022. A printed copy of the email was included as an attachment to the motion. The Coate declaration further states that Fontana's counsel called Parent on April 11, 2022, and left a message asking Parent to return the call to schedule a resolution session. The declaration states that Parent did not return the call.

According to the Coate declaration, on April 11, 2022, Ms. Coate sent Parent an email explaining the purpose of the resolution session and proposing dates and times for the resolution session meeting. A printed copy of the email was included as an

attachment to the motion. According to the Coate declaration, Fontana did not receive a response to the email.

Included as an attachment to motion is a letter dated April 14, 2022, signed by Jacqueline Williams, the director of Special Services for Fontana. The letter discusses the purpose of the resolution session, proposes two specific dates and times for the meeting, and advises Parent that Fontana may ask OAH to dismiss Student's complaint if Parent does not participate in a resolution session within 30 days of the April 4, 2022 service date. According to the motion, this letter was sent to Parent at the address Parent listed in the due process hearing request, and no response to the letter was received by Fontana.

In its motion, Fontana contends that this matter may not advance to hearing until Student has participated in a resolution meeting or both parties have agreed to waive the resolution meeting. Fontana notes that it may not unilaterally waive the requirement of a resolution session. (34 C.F.R. § 300.510(a)(3)(i); Ed. Code § 56501.5(e).)

Student is required to participate in a resolution meeting before a due process hearing could occur unless both parties agree to waive the resolution session. Under IDEA, OAH has discretion to dismiss a complaint if the student and/or parent refuses to participate in a resolution session and the district provides appropriate documentation supporting such motion to dismiss.

Here, the parties have not participated in a resolution meeting due to Parent's failure to respond to Fontana's attempts to schedule the meeting. Student has not proposed that the resolution meeting be waived, nor provided any reason why Parent did not attend a resolution session. Fontana has established that prior to filing its motion it made reasonable efforts to convene a resolution meeting within 15 days of

receiving Student's April 4, 2022 due process hearing request. Student has not filed in response to this motion to dismiss or otherwise provided OAH with a reason for failing to participate in a resolution meeting, or make any assurance that Parent will participate in a resolution session. Therefore, the District's motion to dismiss is granted.

ORDER

1. Fontana's motion to dismiss is granted, and the matter is dismissed without prejudice.
2. All previously scheduled dates are vacated.

IT IS SO ORDERED.

Chris Butchko

Chris Butchko
Administrative Law Judge
Office of Administrative Hearings