BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT

v.

KELSEYVILLE UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2022080771

ORDER DENYING MOTION TO DISMISS FOR FAILURE TO PARTICIPATE IN RESOLUTION SESSION AND ORDER CONTINUING DUE PROCESS HEARING

NOVEMBER 4, 2022

On August 24, 2022, Student filed with the Office of Administrative Hearings, known as OAH, a due process hearing request, known as a complaint, naming Kelseyville Unified School District.

On October 4, 2022, Kelseyville filed a motion to dismiss the complaint due to Student's failure to participate in a mandatory resolution session. The motion was discussed with the parties at the prehearing conference, known as a PHC, held on October 7, 2022, and ruled upon that that time. Student did not file in response to the motion. By order dated October 7, 2022, OAH denied the request to dismiss because

Kelseyville did not show that it had made a reasonable effort to hold the resolution session. Student and Parents claimed they were unaware of Kelseyville's attempts to schedule a resolution session, and Kelseyville did not contact Student's legal counsel regarding the resolution session. At the PHC, Kelseyville reported that it did not contact Student's legal counsel because they did not want to have to deal with James Peters, a lay advocate associated with Student's law firm, because Kelseyville felt that he was obstructive. Because Kelseyville did not attempt to contact Student's legal counsel to arrange the resolution session once Student did not respond, Kelseyville did not show reasonable effort to hold the session. Accordingly, the October 4, 2022 motion to dismiss was denied.

On October 26, 2022, Kelseyville again filed a motion to dismiss the complaint due to Student's failure to participate in a resolution session. Student filed an opposition to the motion on October 31, 2022.

APPLICABLE LAW

A local educational agency is required to convene a resolution meeting with the parents and the relevant members of the individualized education program 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) (2006).) The resolution session need not be held if it is waived by both parties in writing or the parties agree to use mediation. (§ 1415(f)(1)(B)(i)(IV); 34 C.F.R. § 300.510(a)(3)(2006).) There are no provisions of law that allow a parent or a local educational agency to unilaterally waive the resolution meeting. (71 Fed. Reg. 47602, No. 156 (Aug. 14, 2006.)

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)(2006).) If the local educational agency is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made and documented, the agency 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)(2006).)

DECLARATIONS OF THE PARTIES

Kelseyville's motion was accompanied by sworn declarations from its superintendent, David S. McQueen, and its director of special education, Keely Antoni, both of whom attended the resolution session on October 21, 2022. Kelseyville also included a sworn declaration from legal counsel Aimee Perry regarding events and communications before and after the resolution session. Superintendent McQueen and Director Perry both declared that the parties agreed to hold a videoconference resolution session on October 21, 2022, and that the session was convened at 4:00 PM. They reported that Mr. Peters attended on behalf of Student, but Student and Parent had difficulty connecting to the videoconference and had to be connected by telephone.

Superintendent McQueen's declaration reports that he began introductions of the attendees at approximately 4:10 PM, explained the purpose of the resolution session as allowing the parties to discuss the complaint and the facts of the case, and then asked what Student wanted to settle the matter. According to Superintendent McQueen, Student deferred the answer to his Parent, who asked what Kelseyville was willing to offer. The declaration then states that Mr. Peters then interrupted and asserted that Kelseyville was "not prepared to offer anything." Superintendent McQueen then asked Student whether he wished to return to high school in Kelseyville, but Mr. Peters responded that questions should be posed to Parent, not Student, and

again stated that Kelseyville was not prepared to discuss settlement. The McQueen declaration states that Mr. Peters then asked if McQueen had read the complaint. Superintendent McQueen responded that he had, and then asked Parent if Student was seeking everything that was requested in the complaint, as Kelseyville was willing to discuss compensatory education but wanted to know what specific services Student wanted. Superintendent McQueen's declaration then reports that Mr. Peters interrupted, stating that "the district has nothing to offer," and told Student and Parent that they should end the meeting. Student and Parent agreed to do so, and the resolution session ended at 4:20 PM, approximately ten minutes after all parties joined.

Director Antoni's declaration is consistent with Superintendent McQueen's declaration. The declaration states that District Superintendent Secretary Maribel Mosqueda was also present on behalf of Kelseyville. Otherwise, the declaration tracks the language in Superintendent McQueen's declaration and adds little other than corroboration. Legal counsel Perry's declaration does not report on the resolution session, as counsel did not attend, but notes that Superintendent McQueen called counsel at 4:20 PM that day to report that the resolution session had ended.

Student provided two sets of declarations regarding the resolution session. As part of an October 25, 2022 report on the resolution session, Student included declarations from himself, Parent, and his legal counsel Sheila Bayne. Student's declaration states that, after a delay of about 15 minutes, Student and Parent connected to the session for introductions. Student stated that a district secretary was in attendance to take notes. At the session, Student requested that his Parent speak for him, and that the meeting ended after "20- 25" minutes. Parent's declaration is substantially similar. Counsel Bayne's declaration states on personal knowledge that the

resolution session was held and reports on what was said and done, but the declarant does not state that she was present at the meeting.

The failure to have a first-hand report of the events at the session was addressed in Student's opposition to the October 26, 2022 motion to dismiss. Although counsel Bayne's declaration was redated and submitted with the exact same text, Mr. Peters provided a declaration. However, that declaration includes no direct statements about his participation in the resolution session. It states that "the parties all agree" that a session lasting 20-25 minutes was held and that no resolution was reached. It states that Kelseyville asserts that Parent did not participate "in good faith" because Parent did not answer its questions about the complaint and that the complaint should therefore be dismissed.

Mr. Peter's declaration states that there is no authority supporting that contention and that "there is a dispute as to which party failed to act in good faith at the resolution session." Mr. Peters then argues that the motion should be dismissed and cites an OAH order for that proposition. Thereafter, Mr. Peters notes that he has been assisting parents for over 30 years, that he, a non-lawyer, never gives legal advice, and digresses into an argument that school districts dislike having knowledgeable parties accompany parents at resolution sessions because it threatens their edge of experience and knowledge. Mr. Peters does not address his role at the resolution session or refute Kelseyville's assertions that he dominated the resolution session and ended it without discussing the facts underlying the complaint or the remedies sought.

ANALYSIS

Participation in a resolution session is not optional to any party. (34 C.F.R. § 300.510(b)(3)(2006).) Unless the session has been waived by both parties, a case may

not proceed to hearing without a resolution session. (34 C.F.R. § 300.510(b)(3)(2006).) "The purpose of the [resolution session] is for the parent of the child to discuss the due process complaint, and the facts that form the basis of the due process complaint, so that the [local educational agency] has the opportunity to resolve the dispute that is the basis for the due process complaint." (34 C.F.R. § 300.510(a)(2)(2006).) However, there is no definition of what "participation" entails at a resolution session. Kelseyville has cited an Office of Special Education Programs, known as OSEP, letter noting that "it would be inconsistent with the requirements in 34 CFR § 300.510(a)(2) regarding the purpose of the resolution meeting for the [local educational agency] to refuse to discuss the issues raised in the parent's due process complaint during that meeting." (*Letter to Casey* (Mar. 27, 2013).) A parent's refusal to discuss the issues in that parent's complaint raises the same concerns. However, OSEP letters are not binding authority.

Kelseyville has made an uncontested showing that Mr. Peters acted to cut short the resolution session without participating in or allowing a discussion of the issues in the complaint and the remedies sought. In his briefing, Student notes that Kelseyville attempted to discuss the complaint and remedies, but "Student's non-attorney advocate, Mr. James D. Peters III, was not willing to enter into that futile discussion since the issues and remedies are stated in the complaint… After it was clear that Kelseyville had no interest to settle, Mr. Peters ended the resolution session." (Petitioner's Notice of Held Resolution session, pp. 3-4, lines 25-2.) Peters' statement that Kelseyville was unwilling to settle because it wanted to discuss the complaint first is not persuasive. Kelseyville was participating in the resolution session in the manner expected under the statutory guidance and was asking Student what he was seeking in to resolve the case. Mr. Peters was working against the purpose of the resolution session.

However, Kelseyville has not offered any legal authority holding that participating in a resolution session means more than simply attending the meeting before walking out. On that basis, Kelseyville's request to dismiss the action is denied.

Although, Kelseyville did not offer sufficient legal authority to dismiss Student's complaint, Kelseyville did convincingly argue that due to Mr. Peter's actions at the resolution session, Student did not allow Kelseyville and Parents the opportunity to discuss the due process complaint and the facts that form the basis of the due process complaint.

Every court has the inherent power to control the disposition of the cases on its docket. (*Landis v. North American Co.*, 299 U.S. 248, 254-255, 57 S.Ct. 163, 165-166 (1936).) By analogy, that same power extends to hearing officers in administrative proceedings. Cases may not proceed to hearing if a resolution session has not been held or waived, and one party may not act unilaterally to waive the resolution session. (71 Fed. Reg. 47602, No. 156 (Aug. 14, 2006.) This is effectively what Student has tried to do here through the actions of Mr. Peters.

Further, it was impressed upon the parties at the PHC that the requirement of a resolution session needed to be taken seriously. The administrative law judge informed the parties that participation at the resolution session was an obligation, not an option. Student expressed willingness to participate in the resolution session and stated a preference for resolving cases through confidential discussion and negotiation. Kelseyville expressed a reluctance to participate in the resolution session if Mr. Peters was allowed to attend. Counsel stated "historically, when we've tried to do resolution sessions with Ms. Bayne's office, Jim Peters attends and he's rather belligerent at the [early resolution] sessions and he's very obstructive." In its briefing, Kelseyville cited several OAH decisions or orders noting Mr. Peter's obstruction or domineering behavior

at individualized education program team meetings or resolution sessions. Counsel for Student heard the administrative law judge advise the parties that participation at the resolution session was required, heard Kelseyville's concerns about Mr. Peter's behavior, and has not contested the allegations that his behavior at the October 21, 2022 resolution session was consonant with his misbehavior in other matters before OAH. Mr. Peters' behavior was problematic and obstructed the purpose of the resolution session in this case.

Because it has not been demonstrated that Kelseyville had the opportunity to meet with Student to discuss the due process complaint and the facts that form the basis of the due process complaint, this case may not yet proceed to hearing. All current dates for hearing are vacated. The parties must meet for a resolution session within 15 days of this order.

This is the second time that the parties have been directed to meet for a resolution session. Any failure to effectuate the purpose of the resolution session will be considered in light of the previous failure and the admonishments in this order. The parties are strongly directed to conduct the resolution session with extreme courtesy, professionalism, and adherence to the purpose of resolution sessions.

ORDER

1. Kelseyville's motion to dismiss is denied.
2. The parties are ordered to participate in a resolution session within 15 calendar days of the date of this order.

3. All hearing dates are vacated. The due process hearing in this matter is continued to November 29, 2022, through December 1, 2022.

Chris Butchko

Chris Butchko
Administrative Law Judge
Office of Administrative Hearings