BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. TEHACHAPI UNIFIED SCHOOL DISTRICT.	OAH Case No. 2015120968 ORDER DENYING MOTION TO DISMISS AND DENYING REQUEST FOR SANCTIONS

On January 25, 2016, Tehachapi Unified School District filed a motion to dismiss Student's due process hearing request (complaint) with the Office of Administrative Hearings due to the non-participation of Student's parent in a mandatory resolution session. On January 28, 2016, Student filed an opposition requesting sanctions against District. On February 1, 2016, District filed a reply.

APPLICABLE LAW

A local educational agency 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 the Student's complaint. (20 U.S.C. § 1415(f)(1)(B)(i)(I); 34 C.F.R. § 300.510(a)(1) (2006).[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 Local Education Agency 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 is supported by the declaration of its superintendent that an attempt was made to reach Parent by mail at Parent's home address, with an attached copy of the certified letter and envelope returned to District as unclaimed.

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[1] All subsequent references to the Code of Federal Regulations are to the 2006 version.

Student's opposition is unsupported,[2] but District's reply tacitly admits the information contained in the opposition: since the filing of the complaint, Parent had moved within the District, District staff was in regular email contact with Parent on related matters, and counsel for Student and District were in regular contact. District made no attempt to telephone or email Parent or Student's counsel to arrange a resolution session when a response was not received to the superintendent's letter. District's motion and reply also fail to address Student's opposition assertion that Student was willing to waive informal dispute resolution in writing in favor of mediation.

Under these circumstances, District has failed to establish that it made reasonable efforts to obtain the participation of Parent in the resolution meeting, and is not entitled to a dismissal of Student's complaint for the non-participation of Parent. Accordingly, District's motion to dismiss is denied.

Student's opposition requests that sanctions be imposed on District for its failure to use good faith in scheduling the resolution session, and for initially insisting that this matter proceed to trial on scheduled dates and then seeking that Student agree to a continuance. Student also argues that District administration would not have been available on the late December 2015 dates proposed for a resolution meeting, as school was not in session. No substantive evidence was submitted in support of Student's sanctions request, either of the reason given for seeking a continuance, the length of the continuance sought, or the availability of District administration during the winter break. Moreover, even if supported by competent evidence, District's alleged actions would not warrant sanctions because they involved routine scheduling matters, and Student's characterization of the requests as in bad faith, without more, is speculative. Therefore, Student's request for sanctions is denied.

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[2] Statements by counsel for Student and District under penalty of perjury, that the facts contained in the opposition and reply papers were true, were insufficient to support their arguments. A declarative statement by counsel at the end of points and authorities does not, and cannot, replace the sworn declaration of witnesses to the events counsel seek to have considered as evidence.

ORDER

1. District's motion to dismiss is denied.

2. The currently scheduled dates in this matter are confirmed.

3. Student's request for sanctions is denied.

DATE: February 3, 2016

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings