

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PANAMA BUENA VISTA UNION
SCHOOL DISTRICT.

OAH CASE NO. 2013090048

ORDER FOLLOWING PRE-HEARING
CONFERENCE AND GRANTING
DISTRICT'S MOTION TO DISMISS
THE DUE PROCESS COMPLAINT

On October 27, 2013, at 10:00 a.m., a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Stella L. Owens-Murrell, Office of Administrative Hearings (OAH). Nicole Hodge-Amey, Attorney at Law, appeared on behalf of Student. Kathleen LeMay, Attorney at Law, appeared on behalf of District. The PHC was recorded.

On October 22, 2013 District timely filed its PHC statement and concurrently filed a motion to dismiss based upon Student's failure to participate in a resolution session. Student's PHC statement was untimely filed and Student untimely filed his response to District's motion to dismiss.¹ At the PHC Student's attorney was allowed to provide an oral response to the motion. Student's attorney argued that the agreement to attend mediation in lieu of the resolution session did not provide for dismissal of the complaint if Student failed to attend mediation. As set forth in the ruling below, District's Motion to Dismiss is granted.

RULLING ON MOTION TO DISMISS

On August 28, 2013, Student filed with the Office of Administrative Hearings (OAH) a due process hearing request (complaint) on behalf of Student naming District as the respondent.

¹ At the PHC Student stated that the PHC statement was filed on Friday October 25, 2013 at 1:00 p.m. Student did not state when the response to District's motion was filed. Student further stated that OAH notified her that it had received only the first and last page of both the PHC statement and the response. The PHC was held at 10:00 a.m. on October 28, 2013, as indicated above. As of the time of the PHC, OAH had no record of receipt of either document. The PHC concluded at 10:10 a.m. After the PHC a note was posted in Practice Manager (PM) at 10:25 a.m. indicating Student's PHC statement was received at 9:13 a.m. After the PHC and the drafting of this Order, a note was posted in OAH's calendaring system showing that Student filed a declaration opposing District's motion on Saturday October 26, 2013. Both filings were untimely.

On October 22, 2013 District filed a motion to dismiss the due to Student's parent's non-participation in a mediation which the parties agreed to attend in exchange for a mutual waiver of the mandatory resolution session. District asserted in its motion that the parties agreed in writing that a resolution session need not be held because the parties agreed to attend mediation.

As will be discussed below good cause to dismiss the complaint has been established, and District's motion is granted.

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) (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 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) (2006).)

Discussion and Order

In its motion, District documented its efforts to obtain a resolution session. On October 8, 2013 the parties executed an agreement entitled "Waiver of Resolution Session/Agreement to Mediate." The agreement is attached as Exhibit B to District's motion. The Agreement provided that the parties agreed to waive the resolution session and proceed to mediation in lieu of the resolution session. The parties further agreed the Mediation would be held on October 22, 2013 at 9:30 a.m. at District's office.

On October 21, 2013 Student unilaterally cancelled the Mediation and made no request to reschedule mediation. District contends that Student secured an agreement from District to be relieved of the obligation to go to resolution session in exchange for attendance at mediation upon which District detrimentally relied. Student's cancellation of Mediation without consulting with District was a means of circumventing the mandatory resolution process. Whether the Agreement provided for dismissal of the complaint on Student's failure to comply with the waiver Agreement does not relieve Student of compliance with the IDEA requirement that Student participate in a resolution session prior to hearing, or potentially suffer dismissal on District's motion.

Here, District has established that it made reasonable efforts to obtain Student's parent's participation in a resolution session prior to filing its motion to dismiss. Student's unilateral cancellation of the mediation without attempting to reschedule constituted a refusal

to participate in a resolution session. Therefore, District's motion to dismiss Student's complaint is granted. All dates are vacated.

IT IS SO ORDERED.

Dated: October 27, 2013

/s/

STELLA OWENS-MURRELL
Administrative Law Judge
Office of Administrative Hearings