

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

RIVERBEND ELEMENTARY SCHOOL.
OAH CASE NUMBER 2023120126

ORDER DENYING MOTION TO DISMISS, AND
CONTINUING CASE

JANUARY 8, 2024

On November 29, 2023, Student filed a due process hearing request with the Office of Administrative Hearings, called OAH, naming Riverbend Elementary School as respondent.

On January 3, 2024, Riverbend filed a motion to dismiss for Parent's failure to participate in a mandatory resolution session. Parent did not respond to the motion.

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).)

DISCUSSION

Riverbend's motion, supported by declarations under penalty of perjury, establishes that Parent did not attend resolution sessions scheduled and re-scheduled for multiple dates, and although Parent initially responded to Riverbend's attempts to schedule the session, Parent then stopped responding. Riverbend made multiple efforts to hold the resolution session.

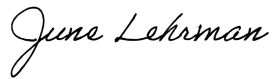
Parent is required to participate in a resolution session before a due process hearing may be commenced. There was no written agreement to waive the resolution or proceed to mediation in lieu of the resolution session. Respondent established that it made reasonable efforts to obtain parental participation before filing its motion to dismiss.

ORDER

1. District's motion to dismiss is denied but the matter is continued for four weeks from the date of this order.
2. The new prehearing conference date is February 5, 2024 at 1:00 PM. The new due process hearing dates are February 14 and 15, 2024.

3. The parties are ordered to hold a resolution session within 14 calendar days of the date of this order.
4. All previously set dates in this matter are vacated.
5. District may renew the motion to dismiss if Parent does not participate in a resolution session in accordance with this Order.

IT IS SO ORDERED

A handwritten signature in cursive script that reads "June Lehrman".

June Lehrman

Administrative Law Judge

Office of Administrative Hearings