BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2015090809
v.	ORDER FOLLOWING PREHEARING CONFERENCE AND GRANTING DISTRICT'S MOTION TO DISMISS
ADELANTO ELEMENTARY SCHOOL DISTRICT.	

On October 30, 2015, a telephonic prehearing conference was held at 3:00 p.m., in accordance with written notice to the parties, before Administrative Law Judge Marian H. Tully, Office of Administrative Hearings. As explained below, Parent failed to appear. Vivian E. Billups, Attorney at Law, appeared on behalf of Adelanto Elementary School District. The PHC was recorded.

Prehearing Conference

Parent was represented by counsel until October 13, 2015, when Student's attorney filed a Notice of Withdrawal. Student did not file a PHC statement, witness and exhibit lists, with OAH in accordance with the Order Setting Due Process Hearing and Prehearing Conference dated September 22, 2015. Parent's PHC statement, witness and exhibit lists were due October 27, 2015.

On October 29, 2015, the OAH case manager attempted to call Parent concerning the PHC. The case manager was unable to reach Parent because OAH did not have a current telephone number for Parent. The case manager obtained two telephone numbers from Student's former attorney. One of the telephone numbers was disconnected. The case manager reached Parent's sister on the other telephone number. The case manager left a message with Parent's sister who informed the case manager that she would give Parent the message later that day. The case manager called Parent's sister again at 10:16 a.m., on October 30, 2015. Parent's sister said that she would personally ask Parent to call OAH and give OAH a telephone number where she could be reached at 3:00 p.m. for the PHC. Parent did not comply. Therefore, the ALJ was unable to obtain Parent's appearance for the telephonic PHC.

For these reasons, Student appears to have abandoned his due process hearing request. OAH may issue an Order to Show Cause as to why a matter should not be dismissed for failure to prosecute. However, an OSC does not serve the interests of the parties in this case because, for the reasons set forth below, there is an independent basis to dismiss the matter.

Motion to Dismiss

Student filed the request for due process hearing on September 15, 2015. On October 16, 2015, District filed a Motion to Dismiss Student's case on the grounds Parent failed to participate in a mandatory resolution session. The Motion to Dismiss was supported by a declaration from District's Director of Special Education. No opposition to the Motion to Dismiss was filed.

Federal and state law regulating special education administrative proceedings require that, when parents file a due process complaint, within 15 days of receiving notice of such complaint, the public school district must convene a resolution session. (20 U.S.C. § 1415(f)(1)(B)(i)(I); 34 C.F.R. § 300.510(a)(2006); Ed. Code, § 56501.5, subd. (a)(1).) The purpose of the resolution session is to permit the parents of the child with special needs to discuss their complaint, and permit the school district to resolve the matter. (20 U.S.C. § 1415(f)(1)(B)(i)(IV); 34 C.F.R. § 300.510(a)(2)(2006); Ed. Code, § 56501.5, subd. (a)(4).) The school district has 30 days from receipt of the complaint to reach a resolution. (20 U.S.C. § 1415(f)(1)(B)(ii); 34 C.F.R. § 300.510(b)(1)(2006); Ed. Code, § 56501.5, subd. (c).) 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).)

District timely scheduled a resolution session for September 25, 2015. At the request of Student's then attorney, the resolution session was rescheduled for October 1, 2015. District's Director of Special Education, a representative from Desert Mountain SELPA, Ms. Billups, and Student's attorneys met at District's office on the scheduled date and time. At the request of Student's attorney, Parent was to participate by conference call. The attorney provided a telephone number to District's Director of Special Education and she placed the call. The person that answered the telephone told the District's Director of Special Education that the telephone number did not belong to Parent, asked someone in the background "What number do you want them to call you on?" and the person answered "my number." The District's Director of Special Education called the number provided but there was no answer. The Director left a voice message that the session was mandatory, and that "everyone is here" "with your attorneys." Parent did not return the call. The inference from the evidence is that Parent was available at the scheduled time and date and declined to participate. District attempted to reschedule the resolution session for October 8, 2015, Parent did not respond, attend or return telephone calls. District made multiple reasonable efforts, but was unable, to obtain Parent's participation in the resolution session.

Accordingly, District's Motion to Dismiss is granted.

IT IS SO ORDERED.

DATE: October 30, 2015

/S/

MARIAN H. TULLY
Administrative Law Judge
Office of Administrative Hearings