

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF OREGON  
for the  
SUPERINTENDENT OF PUBLIC INSTRUCTION**

IN THE MATTER OF THE EDUCATION OF )  
STUDENT and Beaverton School District ) **RULING ON [BEAVERTON  
SCHOOL] DISTRICT'S MOTION  
TO DISMISS AND FINAL ORDER  
OF DISMISSAL**  
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) Case No.: DP 13-108

**HISTORY OF THE CASE**

On June 17, 2013, Parent filed a request for a due process hearing with the State Superintendent of Public Instruction. The State Superintendent of Public Instruction appointed Senior Administrative Law Judge (ALJ) Joe L. Allen, of the Office of Administrative Hearings (OAH), to conduct the due process hearing and issue a Final Order therein.

On July 22, 2013, Sr. ALJ Allen convened a prehearing conference in this matter. Beaverton School District (the District) appeared, through in-house counsel Constance Bull, and participated in the hearing. Parent failed to attend the prehearing conference. At the conference, the ALJ established timelines for all prehearing matters and scheduled a date for hearing in this matter. Also at the prehearing conference, Ms. Bull requested permission to make an oral motion to dismiss based on Parent's failure to participate in the resolution meeting. The ALJ denied this request but established a deadline by which the District could file such motion in writing. The ALJ provided Parent notice of the briefing schedule, including her opportunity to respond to the District's motion no later than August 9, 2013, in the Notice of Hearing mailed on or about July 29, 2013.

On or about July 29, 2013, the District filed a Motion to Dismiss (motion). Parent failed to respond to the motion.

**ISSUE**

Whether Parent's request for a due process hearing should be dismissed because she failed to participate in the resolution meeting. 34 CFR § 300.510(b)(4).

**DOCUMENTS CONSIDERED**

The District's motion, along with attached affidavits and supporting exhibits, as well as the Parent's due process complaint and Superintendent's referral documents were considered in preparing this ruling and order.

## FINDINGS OF FACT

(1) On or about June 17, 2013, Parent filed a request for a due process hearing (hearing request or due process complaint) with the State Superintendent of Public Instruction (Superintendent). Upon filing, Parent requested expedited proceedings. (Hearing request at 1.) On or about June 19, 2013, Parent sent an email to the Superintendent's office requesting to "unexpedite [sic] the due process [proceedings.]" (*See*, Referral.)

(2) Prior to the filing of the due process complaint, Parent sent a copy of the hearing request to the District on or about June 13, 2013. (Affidavit of Danielle Sheldrake at 1.)

(3) On June 14, 2013, based on the initial expedited status of Parent's hearing request, the District sent a letter to Parent, at her address of record, scheduling a resolution meeting for June 19, 2013 at 8:00 a.m. (Aff. of Sheldrake at 1; Ex. 1.) Also on that date, the District sent a copy of the letter as an attachment to an email at Parent's email address of record. (Aff. of Sheldrake at 2; Ex. 2.)

(4) In addition, on June 14, 2013, Danielle Sheldrake, Director of Special Education for the District, contacted Parent by telephone to discuss the hearing request and mediation options. During this conversation, Parent refused mediation. Ms. Sheldrake then explained the District's belief that, due to the expedited nature of the hearing request, the resolution meeting would need to be held sometime during the week of June 17, 2013. Parent indicated she was unsure of her availability to attend the resolution meeting during this period. (Aff. of Sheldrake at 2; Ex. 3.)

(5) On or about June 17, 2013, the District informed Parent via email that the June 19 2013 resolution meeting had been canceled because Parent had not yet filed the hearing request with the Oregon Department of Education (ODE). Also on that date, Ms. Sheldrake contacted Parent by telephone and explained that, once the hearing request was filed with ODE, the District was prepared to hold the resolution meeting within 14 days. During this meeting, Parent informed Ms. Sheldrake that she had spoken with Claudette Rushing with ODE and informed her that the hearing request would not be expedited. Parent did not agree to a date for the resolution meeting during this conversation. (Aff. of Sheldrake at 2; Ex. 5.)

(6) On June 18, 20, and 27, 2013, the District attempted to contact Parent via email to secure her participation in the resolution meeting. In each of these communications, the District proposed dates for the resolution meeting and informed Parent of the urgency of the matter. Parent failed to respond to either communication with a commitment to participate or a proposal of alternate dates.<sup>1</sup> (Aff. of Sheldrake at 2 through 3; Exs. 6 through 9.)

(7) On June 24, 2013, the District sent Parent an invitation, via email, to participate in a resolution meeting scheduled for June 27, 2013, at 8:30 a.m. Parent failed to respond. On June 25,

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<sup>1</sup> On June 21, 2013, Parent responded to the District's email communications with a statement indicating that she had informed ODE that the hearing request was not to be expedited. Parent failed to address the District's requests for dates she would be available to hold the resolution meeting. (Ex. 8)

2013, the District sent a follow up email asking Parent if she was available to attend the scheduled resolution meeting. Parent again failed to respond. (Aff. of Sheldrake at 3; Exs. 10 and 11.)

(8) On June 26, 2013, the District learned Parent was in the hospital. The District canceled the resolution meeting scheduled for June 27, 2013, and communicated the cancellation to Parent via email and voicemail messages. (Aff. of Bull; Ex. 12)

(9) Between July 2 and 16, 2013, the District made five separate attempts to contact Parent via telephone in order to secure her commitment to participate in a resolution meeting. The District left voicemail messages for Parent on two occasions. Parent failed to respond to either message. On the remaining three occasions, the District was unable to leave messages because Parent's voicemail box was full. (Aff. of Bull at 2 through 3; Exs. 13, 15, 17, and 19.)

(10) Between July 3 and 22, 2013, the District sent five separate email communications to Parent attempting to secure her participation in the resolution meeting. Parent failed to respond to any of these communications from the District. (Aff. of Bull at 2 through 3; Exs. 14, 16, 18, 20, and 21.)

(11) On July 24, 2013, Constance Bull, special education legal counsel for the District, and Debbie Morgan, special education assistant for the District, visited Student's home address and spoke with Student's grandmother (Parent's mother) and learned Parent was admitted to a psychiatric hospital with no release date. (Aff. of Bull at 3; Ex. 22.)

### CONCLUSIONS OF LAW

Parent's request for a due process hearing should be dismissed due to her failure to participate in the resolution meeting.

### OPINION

The District seeks an order dismissing Parent's request for a due process hearing on the grounds that it has been unable to obtain Parent's participation in the resolution despite reasonable efforts to do so. 34 CFR § 510(b) identifies procedures and requirements for the resolution process in special education due process proceedings and provides, in relevant part:

*Resolution period.* (1) If the LEA has not resolved the due process complaint to the satisfaction of the parent within 30 days of the receipt of the due process complaint, the due process hearing may occur.

\* \* \* \* \*

(4) If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented using the

procedures in § 300.322(d)), the LEA may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent's due process complaint.<sup>2</sup>

(Emphasis original.)

The evidence demonstrates the District attempted, on no less than 20 separate attempts, to obtain Parent's participation in the resolution meeting over a period of approximately 45 days. Those attempts included multiple telephone calls and emails, as well as a personal visit to the Student's home. This constitutes a reasonable effort, on the part of the District, to secure Parent's participation in the resolution meeting. Parent failed to respond to any of the District's contacts with a suitable date on which she would be available to participate. A review of the record reveals that each of these attempts has been documented by the District in accordance with the requirements of 34 CFR § 300.322(d). Pursuant to 34 CFR § 510(b)(4), the District is entitled to dismissal of the request for due process hearing.

### RULING AND ORDER

The District's Motion to Dismiss is **GRANTED**. Parent failed to participate in the resolution meeting despite reasonable efforts on the part of the District to secure such participation.

Parent's request for a due process hearing is **DISMISSED**, without prejudice, pursuant to 34 CFR § 510(b)(4).

DATED this August 22, 2013



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Joe L. Allen  
Senior Administrative Law Judge  
Office of Administrative Hearings

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234 CFR § 300.322(d) pertains to conducting an IEP Team meeting without a parent in attendance and provides:

A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as-

- (1) Detailed records of telephone calls made or attempted and the results of those calls;
- (2) Copies of correspondence sent to the parents and any responses received; and
- (3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

## **APPEAL PROCEDURE**

**NOTICE TO ALL PARTIES:** If you are dissatisfied with this Order you may, within 90 days after the mailing date on this Order, commence a nonjury civil action in any state court of competent jurisdiction, ORS 343.175, or in the United States District Court, 20 U.S.C. § 1415(i)(2). Failure to request review within the time allowed will result in **LOSS OF YOUR RIGHT TO APPEAL FROM THIS ORDER.**

**ENTERED** at Salem, Oregon this 22nd day of August 2013 with copies mailed to:

Jan Burgoyne, Oregon Department of Education, Public Services Building, 225 Capitol Street NE,  
Salem, OR 97310-0203.