

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

SAUGUS UNION SCHOOL DISTRICT.

OAH CASE NO. 2010010864

ORDER DENYING MOTION TO  
DISMISS

On January 19, 2010, Parents, on behalf of Student (Student), filed a Due Process Hearing Request<sup>1</sup> (complaint) naming the Saugus Union School District (District).

On February 22, 2010, District filed a Motion to Dismiss Student's complaint due to Student's parent's non-participation in a mandatory resolution session.

On February 22, 2010, OAH received Student's opposition to District's Motion to Dismiss.

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 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).) 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 LEA is unable to obtain the participation of the

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<sup>1</sup> A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under Title 20 United States Code section 1415(b)(7)(A).

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).) To satisfy the documentation requirement, District must keep detailed records of telephone calls made or attempted and the results of those calls; copies of correspondence sent to the parents and any responses received, among others. (34 C.F.R. §300.322(d).)

## DISCUSSION

Based on sworn declaration, District established that on January 21, 2010, it offered to hold a resolution session on February 2, 2010. Due to parent unavailability, on January 25, 2010, District offered February 1, 2010 or February 4, 2010 to hold a resolution session. After further correspondence, parties agreed to hold a resolution session on February 8, 2010. On February 1, 2010, parent cancelled resolution session. On February 17, 2010, District again offered parent two additional dates; February 19, 2010 or the February 22, 2010, for a resolution session. Parent declined. Thus, district has established that it made reasonable attempts to get parent's participation in a resolution session and documented those efforts.

Student reasonably explains that he was not advised that his participation in a resolution session is required by law, and that failure to participate could lead to a dismissal of his complaint. None of the District's communication with parent contained information regarding the possibility that Student's complaint could be dismissed due to parent's failure to participate in a resolution session. Thus parent, who is not represented by an attorney, did not understand the full consequences of non-participation in the mandatory resolution session. Parent is now aware of the requirement, and parent is willing to participate in a resolution session. Parent indicated that he is also prepared to use mediation to attempt a resolution of the issues raised in the Student's complaint, if the resolution session does not resolve the disputes.

Therefore, even though OAH has the discretion to dismiss Student's complaint due to failure of the parent to participate in a resolution session, the discretion would be exercised in a manner consistent with the spirit of the law requiring resolution sessions. The purpose of the resolution session is to permit the parent the opportunity to discuss their complaint, and permit the school district to resolve the matter. Further, the resolution process offers parties a valuable chance to resolve disputes before expending considerable time and money in due process hearings. Therefore, because parent understands the importance of attempting to resolve Student's complaint through the resolution process prior to a hearing, and because parent has represented that he is willing to attend a resolution session, parent would be given the opportunity to do so prior to dismissal.

ORDER

1. District's motion to dismiss is denied.
2. Parent's motion to extend procedural time lines is denied.
3. The parties shall participate in a resolution session by March 17, 2010. Failure of Student to participate in a resolution session may result in dismissal of Student's complaint. The parties may, by mutual agreement, waive resolution session or utilize mediation instead.
4. All previously set dates in this matter are vacated.
5. The 45 day time line for a due process hearing and decision pursuant to Title 20 United States Code section 1415(f)(1)(B), will be reset to begin on March 18, 2010. OAH shall issue a new Scheduling Order and Notice of Due Process Hearing and Mediation reflecting the new timeline.

IT IS SO ORDERED.

Dated: March 2, 2010

/s/

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ADENIYI AYOADE  
Administrative Law Judge  
Office of Administrative Hearings