

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2010100785

ORDER ON DISTRICT'S MOTION TO
HOLD STUDENT'S DUE PROCESS
HEARING IN ABEYANCE

On October 14, 2010, Student filed a due process hearing request (complaint) on naming the Los Angeles School District (District) as the respondent.

On November, 22, 2010, District filed a motion to hold due process hearing in abeyance on the ground that Student had not attended a mandatory resolution session despite the District's efforts to schedule one. In support of the Motion, District presented evidence: it notified Student's parent (Parent) by letter on October 28, 2010, of the need to attend a resolution session on November 2, 2010; Parent did not attend the resolution session; on November 2, 2010 and on November 17, 2010, a District due process specialist spoke to Parent to re-schedule the session. Parent confirmed that she was not interested in attending the November 2, 2010 resolution session or any other resolution session. Student filed no opposition to the District's motion. A prehearing conference is scheduled for December 6, 2010 at 1:30 p.m., and the due process hearing is scheduled for December 14, 2010 at 9:30 a.m.

As discussed below, District is correct that it is entitled to a resolution session prior to Student proceeding to hearing. However, Student will be given a final chance to attend a resolution session prior to dismissal. Thus, the parties will be ordered to attend a resolution session on December 14, 2010 at 9:30 a.m., the date and time calendared for the due process hearing. As discussed below, this matter will be dismissed if Student fails to attend a resolution session on or before December 14, 2010.

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).) 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 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).)

When a student requests a due process hearing, he or she must attend an informal resolution session with the local education agency prior to going to hearing unless the parties agree in writing to waive the resolution session. (Ed. Code, § 56501.5.) Here, the District has not waived its right to a resolution session and Student must attend the resolution session prior to a hearing being scheduled.

DISCUSSION

Here, the evidence presented by District demonstrates that it made reasonable efforts to obtain the attendance of Parent at a resolution session. District also presented persuasive evidence that it spoke to Parent twice and Parent refused to attend the November 2, 2010 resolution session and declined to set a different date for a resolution session.

The above facts are sufficient to establish that District made reasonable efforts to schedule a resolution session and that no resolution session occurred within the 30-day timeline. However, because District requested that this matter be held in abeyance, immediate dismissal is not warranted. Instead, dismissal will only be granted if Parent fails to attend a resolution session at the date and time set forth in this Order and District files a Motion to Dismiss. Because neither party has requested a continuance of the December 14, 2010 due process hearing date, the parties are presumed to be available on that date and it will be ordered as the resolution session date. The 45-day timeline for issuance of the decision will be started from that date, all other dates will be vacated, and a new prehearing conference and hearing date will be set.

ORDER

1. District's Motion to hold Student's hearing in abeyance is granted, extending the procedural timelines.
2. All previously scheduled dates are vacated.
3. The parties shall attend a resolution session at the District's office located at 333 So. Beaudry Avenue, 17th Floor, Los Angeles, CA 90017, on December 14, 2010 at 9:30 a.m. The parties may meet earlier than that date if they can agree to a date and time. If Parent does not attend the resolution session on December 14, 2010, this matter will be subject to a request for dismissal.
4. The 45-day timeline for issuance of a decision shall begin to run on December 15, 2010.

5. The new dates on this matter shall be:

A. TELEPHONIC PREHEARING CONFERENCE

DATE: 1/3/2011
TIME: 1:30 p.m.

B. DUE PROCESS HEARING

DATE: 1/11/2011
TIME: 9:30AM
PLACE: LOS ANGELES USD
333 S. BEAUDRY AVE., 17TH FLOOR
LOS ANGELES, CA 90017

Dated: December 2, 2010.

/s/

CLARA SLIFKIN
Administrative Law Judge
Office of Administrative Hearings