

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. 2011020188

ORDER DENYING DISTRICT
MOTION TO RESET TIMELINES AND
REINSTATE RESOLUTION SESSION

On February 02, 2011, Parent on behalf of Student (Student) filed a due process hearing request (complaint) naming the Los Angeles Unified School District (District) as the respondent.

On February 24, 2011, the District filed a motion to extend procedural timelines due to Student's parent's non-participation in a mandatory resolution session. On February 25, 2011, Student filed an opposition to the District's motion.

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).)

The 45-day timeline for the due process hearing starts the day after a resolution meeting, unless the parties agree in writing to waive the resolution meeting. (34 C.F.R. § 300.513(b) & (c) (2006).) If the LEA fails to hold the resolution meeting within 15 days of receiving notice of the due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline. (34 C.F.R. § 300.510(b)(5) (2006).)

DISCUSSION

Student filed his complaint on February 4, 2011. On February 10, 2011, the Administrative Coordinator of the Due Process Unit for the District sent Student's attorney a letter inquiring whether Student wished to waive the resolution session and proceed to mediation. The letter clearly indicated that a waiver of the resolution session also included a waiver of the 45-day timeline. The letter directed that, if Student agreed with the waiver, he should sign in the allotted area on the letter, and return it to the District. If Student did not agree to the waiver, the letter contained a resolution session date of February 22, 2011. Student did not respond to this letter.

On February 11, 2011, a Due Process Specialist (DPS) for the District sent Student's attorney a second letter which offered an earlier resolution session date of February 17, 2011. The letter also reiterated an offer to waive the resolution session to proceed directly to mediation. This letter did not include language to specify that the offer was pursuant to the same terms and conditions as in the February 10, 2011 letter, nor did it contain the caveat that a waiver of resolution session included a waiver of the 45-day timeline. Student accepted the offer to waive the resolution session as worded in the February 11 letter.

On February 14, 2011, the DPS contacted Student's attorney's office and spoke with a paralegal on behalf of Student's attorney. The DPS indicated that the acceptance of the waiver of the resolution session included the waiver of the 45-day timeline as originally indicated in the February 10 letter. Further, if Student did not agree to the timeline waiver, then there was no agreement to waive the resolution session. Student's attorney did not respond to the DPS's telephone call. His opposition statement indicates counsel found it unnecessary to respond to the District, as Student had accepted the District's offer which did not include a waiver of the timeline. Further, Student contends that the waiver of the timeline was an additional condition made after his acceptance of the February 11th offer.

On February 22, 2011, the DPS faxed a letter to Student's attorney and spoke with him by telephone. In the letter, the District reiterated that it did not accept Student's waiver without the 45-day timeline waiver, and that the District was still available for the resolution session scheduled for 1:30 p.m. that day. Student's counsel indicated that Student had waived the resolution session, and therefore Student would not attend the session. Further, as Student noted, the resolution session scheduled for February 22, 2011, was beyond the statutory timeline for resolution sessions.

The disagreement of the parties regarding the waiver of the resolution session as described above revolves around a determination of whether the District's offer of waiver on February 11th was implicitly the same offer made on February 10th. While it would be disingenuous for Student's attorney to indicate he was unaware of the District's desire for a timeline waiver as part of their proposed agreement, it was not accepted by Student pursuant to the February 10 letter. Pursuant to basic contract law, an agreement must be interpreted

pursuant to the “four corners” of the document, and cannot include implied or unstated provisions of agreement. As such, the document speaks for itself, and it does not include any reference to a required waiver of the 45-day timeline. Further, where there is a disagreement in language, a contract will be interpreted against the party who prepared the agreement, in this case, the District. Therefore, Student accepted the District offer to waive the resolution session without a waiver of the 45-day timeline. Student was not required to attend a resolution session.

ORDER

1. The District’s motion to order participation in a resolution session is denied.
2. The District’s motion to extend procedural timelines is denied.

IT IS SO ORDERED.

Dated: March 03, 2011

/s/

JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings