

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. 2011020588

ORDER GRANTING DISTRICT'S
MOTION TO RESET TIMELINES

On February 16, 2011, Student filed a Request for Due Process Hearing (complaint), naming Los Angeles Unified School District as the respondent.

On March 3, 2011, District filed a Motion to Extend Procedural Timelines (District's Motion) on the ground that Student failed to attend a mandatory resolution session despite the District's efforts to schedule one. In support of the Motion, District presented evidence that it notified Student's parent (Parent) by letter on February 22, 2011, of the resolution session on February 28, 2011. District proposed that the parties waive the resolution session and go directly to mediation but District conditioned its waiver on Parent's agreement to waive the 45-day timeline for issuance of a decision. On February 23, 2011, Student's attorney responded by letter and agreed to waive the resolution session, but she was silent as to Student's agreement to waive the 45-day timeline. On February 25, 2011, District sent an e-mail to Student's attorney's paralegal stating if Student would not agree to waive the timeline then the District would hold a resolution session on February 28, 2011. Student's attorney did not respond to District's e-mail and Parent did not attend the resolution session.

Student filed an opposition to District's motion based on Parent's acceptance of District's offer to waive the resolution session and go directly to mediation. Student argues that because District's attorney did not respond to her February 23, 2011 letter a "good faith offer and acceptance occurred." Student asserts that no harm would befall District if this matter proceeds directly to mediation, but a delay in addressing the substantive issues raised in the complaint would harm Student.

APPLICABLE LAW AND ANALYSIS

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); Ed. Code, § 56501.5.) 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); Ed. Code, § 56501.5.) 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).)

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 was willing to waive the resolution session and go directly to mediation if Student waived the 45-day timeline for issuance of a decision. However, because Student would not agree to such a waiver, District would not agree to waive the resolution session. Therefore, there was no agreement of the parties to waive the resolution session or to use mediation. If a parent does 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.

In sum, District is correct that Student cannot proceed to hearing unless a resolution session is held or waived. Thus, the hearing timelines will be reset as of the date of this Order. If Parent fails to attend a resolution session within 30 days of the date of this order, District may file a motion to dismiss for failure to attend the resolution session.

ORDER

1. District's Motion to extend the procedural deadlines is granted. The timelines for hearing established pursuant to Title 20 United States Code section 1415(f)(1)(B) shall be reset as of the date of this order.
2. All previously scheduled dates are vacated.
3. Parent is ordered to participate in a resolution session within 30 days of the date of this Order. If Parent fails to attend a resolution session within that time, District shall file a motion to dismiss.
4. OAH will issue a new Scheduling Order.

Dated: March 17, 2011

/s/

CLARA SLIFKIN
Administrative Law Judge
Office of Administrative Hearings