

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ORANGE UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2011080016

ORDER DENYING MOTION TO
DISMISS AND ORDERING PARTIES
TO ATTEND A RESOLUTION
SESSION

On July 29, 2011, Student filed with the Office of Administrative Hearings (OAH) a due process hearing request (complaint) naming Orange Unified School District (District) as the respondent.

On August 24, 2011, District filed a motion to dismiss due to Student's parent's non-participation in a mandatory resolution session. OAH received no response from Student to District's motion to dismiss.

On August 29, 2011, the undersigned administrative law judge issued an order granting District's Motion to Dismiss Student's Complaint for Failure to Participate in a Mandatory Resolution Session.

On August 30, District filed a request for reconsideration on the grounds that District failed to serve Student with the motion to dismiss. The undersigned issued an order on September 2, 2011 granting reconsideration and further ordering Student to file opposition to the motion.

On September 7, 2011, Student filed opposition to District's motion to dismiss. District filed a reply to Student's opposition on September 8, 2011.

Based upon the pleadings and the applicable law discussed below District's motion to dismiss is denied and the parties are ordered to attend a mandatory resolution session.

APPLICABLE LAW

A local educational agency (LEA) is required to convene a resolution 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) (2006).) The resolution session need not be held if it is waived by both parties in writing or the parties agree to use mediation. (20 U.S.C. §1415(f)(1)(B)(i)(IV); 34 C.F.R. § 300.510(a)(3) (2006).) There are no provisions of

law that allow a parent or an LEA to unilaterally waive the resolution meeting. (71 Fed. Reg. 47602, No. 156 (Aug. 14, 2006).) 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 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) (2006).) 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) (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 contends that he was not obligated to attend a resolution session convened by District more than 15 days from its receipt of the complaint. In support of his contention, he provided the declaration of Kenneth Campbell stating that Student was not successful in serving the District on July 29, 2011 by facsimile but served the complaint by depositing it in the United States mail that same day. Based upon the Declaration of Kenneth Campbell, Student also contends that the complaint was eventually successfully served via facsimile “at a later date”. The Declaration does not specify the date. The Declaration also indicates that Student attempted to contact a District employee by electronic mail to notify District of the complaint. Student further contends that District received the complaint on some date in July prior to the date District first sought to convene a resolution session. Thus, Student contends that District’s notice of resolution session was more than 15 days from the date of receipt of the complaint and was therefore untimely. Student provided no credible evidence of the date District actually received the complaint.

District’s reply supported by Declarations of Denise Mac Allister, Program Coordinator for District’s Special Education Department and Mary Ann Casey, Executive Secretary for District’s Special Education Department, show that Ms. MacAllister was on vacation at the time Student’s representatives e mailed her concerning the complaint, that the District was closed the first week in August, and the Complaint was not received by District until the office opened following week on August 8, 2011. The evidence also establishes that on August 10, 2011, District gave timely written notice of the resolution session scheduled for August 19, 2011 at 9:30 a.m. at District’s Special Education Office. The notice requested parent respond to confirm attendance by August 16, 2011. Parent’s attorney responded by letter dated August 16, 2011 informing District that parent would not attend the

resolution session. Parent's attorney gave no reason or further explanation of Parent's refusal to attend a resolution session.

On August 17, 2011 District's attorney spoke with an advocate from Parent's attorney's office to ascertain whether Parent desired to reschedule the resolution session or was planning not to attend. The evidence further shows that at no time did Student tell District that his refusal to attend a resolution session was based upon his belief that District's notice of resolution session was untimely. Student also admits that there was no agreement to waive the resolution session or proceed to mediation in lieu of the resolution session. Moreover, Student could have moved for intervention of a hearing judge to begin the due process hearing timeline if the District failed to hold the resolution meeting within 15 days of receiving notice of the due process complaint. Student failed to do so in this case.

The evidence does not support Student's contentions. Student's parent is required to participate in a resolution session before a due process hearing may be commenced, and OAH has discretion to dismiss the matter if the parent refuses to participate in a resolution session and the district provides appropriate documentation supporting its motion to dismiss. Although the matter could be dismissed based on the above, Student will be given an opportunity to avoid dismissal by participating in a resolution session. However, based on the failure to participate in a resolution session, all timelines will be reset. If Student fails to attend the resolutions session as ordered below, the matter will be dismissed.

ORDER

1. District's motion to dismiss is denied at this time.
2. The parties are ordered to participate in a resolution session within 30 days of the date of this order.
3. All previously scheduled dates are vacated, and all timelines are reset, such that Student's complaint is deemed filed as of the date of this order.
4. OAH shall issue a new scheduling order setting dates for Mediation, Prehearing Conference, and Due Process Hearing.
5. If Student fails to attend the resolution session as ordered, District may refile its motion to dismiss.

IT IS SO ORDERED.

Dated: September 08, 2011

/s/

STELLA OWENS-MURRELL

Administrative Law Judge
Office of Administrative Hearings