

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

REDLANDS UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012060370

ORDER DENYING MOTION TO
DISMISS AND RESETTING
TIMELINES

Student filed a complaint and request for mediation (complaint) naming District as respondent on June 8, 2012. District filed a motion to dismiss the complaint July 8, 2012, alleging that Student had failed to participate in a mandatory resolution session. The motion was supported by a sworn declaration. Student's attorney filed an opposition on July 11, 2012, which did not include a sworn declaration on Student's behalf, but included unauthenticated exhibits. For the reasons discussed below, the motion is denied and the timelines in this matter are reset to enable the parties to participate in, or mutually waive, the mandatory resolution session.

APPLICABLE LAW AND DISCUSSION

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).)

District asserts in its motion that District sent a letter to Student's parents (Parents) on June 13, 2012, in which District offered two dates and times for a resolution session, June 20, 2012 at 10:00 a.m., or June 21, 2012 at 1:00 p.m. On June 15, 2012, Student's attorney, Mr. Grey, sent an email to District's then-representative, East Valley SELPA's Program Manager Ms. Chism, requesting that District waive the resolution session and requesting a conference between Mr. Grey and Ms. Chism in lieu of a resolution session. Ms. Chism responded to Mr. Grey by email on June 19, 2012, declining to waive the resolution session and

continuing to offer June 20, 2012, or June 21, 2012, for the resolution session. Mr. Grey responded on June 19, 2012, informing Ms. Chism that he did not believe that proposed dates were available and he requested alternative dates. Ms. Chism responded by email at 4:39 p.m. on June 19, 2012, advising Mr. Grey that she would check with the District for alternative dates and would respond by the next day. District also retained legal counsel on June 19, 2012. District's counsel, Ms. Billups, communicated with Mr. Grey by email regarding participation in the resolution session. She informed Mr. Grey that District staff was not available to participate in a resolution session after June 21, 2012, because of the summer break, and requested that Student voluntarily withdraw the complaint to afford the parties an opportunity to informally resolve the dispute without facing procedural requirements of due process proceedings if they could not attend the mandatory resolution session on June 20 or June 21, 2012. District then filed this motion on July 8, 2012. The matter is set for hearing on August 2, 2012.

Student contends in his opposition that the matter should proceed as scheduled without a resolution session because of District's failure to offer dates for a resolution session that were convenient to Parents' and their counsel.

District filed its motion at the end of the 30-day resolution period, which dates from the filing of Student's complaint. As discussed above, the District's efforts to convene a resolution must be reasonable in order to justify dismissal. Here, although Mr. Grey did timely respond to District, no evidence has been offered by District that Parents ultimately refused to participate in a resolution session. On the contrary, Mr. Grey notified District's representatives that Parents were willing to attend a resolution session on a date that was mutually convenient. District did not offer alternative dates because its staff was on summer break, and, instead, filed this motion.

A simple phone call between counsel to discuss scheduling the resolution session on mutually convenient dates could have resolved the issue of scheduling. As such, District has not demonstrated that it made reasonable efforts to obtain Parents' participation justifying dismissal of Student's complaint. Additionally, the unavailability of District staff because of summer break is not a ground under the IDEA for District to avoid its statutory obligations.

Although Student requests in its opposition that Student be permitted to proceed to hearing without participating in the mandatory resolution session, Student statutorily cannot proceed to hearing until a resolution session occurs or is waived by both parties. The evidence showed that District refused to waive the resolution session, and therefore Parents must participate with District in a resolution session.

The timelines in this matter will be reset to allow for a resolution session to take place, unless waived in writing by Parents and a District representative.

ORDER

1. District's motion to dismiss is denied.
2. All previously set dates in this matter are vacated.
3. The parties are ordered to participate in a resolution session within thirty business days from the date of this order.
4. The timelines for hearing established pursuant to Title 20 United States Code section 1415(f)(1)(B) shall recommence as if the complaint was filed on the date of this Order.

Dated: July 11, 2012

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings