

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LENNOX SCHOOL DISTRICT.

OAH CASE NO. 2012070128

ORDER (1) DENYING DISTRICT'S  
MOTION TO DISMISS AND (2)  
VACATING AND RESETTING DATES

On June 29, 2012, Student filed a due process hearing request (complaint) on behalf of Student naming the Lennox School District (District) as the respondent.

On July 30, 2012, the District filed a motion to vacate dates based upon never having received a copy of the complaint against it, or alternatively, for dismissal due to Parent's non-participation in a mandatory resolution session. OAH has received no response from Student.

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).)

DISCUSSION

The District's motion, filed by Arnoldina Gamez, Coordinator of Special Education for the District, seeks to have the dates in this matter vacated because District "is not able [to] challenge [the] sufficiency, address or respond to a complaint that it has not received." The District contends that it received notice of this matter only through receipt of the OAH scheduling order, and that the District has not received a copy of any complaint by Student. However, a copy of Student's complaint is attached to the motion, and Student's complaint itself states that a copy was served on the District. The District's own attachment proves

false its assertion that it never received a copy of Student's complaint, and its motion to vacate dates on this ground is denied.

District fails to submit evidence of untimely receipt of the complaint, or of any prejudice due to untimely receipt, as the District fails to show that it made reasonable, or any, attempts to contact Mr. Finn or OAH to request a copy of the complaint after District was served with the scheduling order by OAH on July 9, 2012. Parties are expected to take reasonable steps, such as calling each other on the telephone, before engaging in time-consuming motion practice. To the extent District claims ignorance of the contents of Student's complaint, as discussed above, District ultimately got the complaint, or the delay was of its own making.

On the other hand, District is correct that Student's parent is required to participate in a resolution session before a due process hearing may be commenced, and that OAH has discretion to dismiss the matter if the parent refuses to participate and the district provides appropriate documentation supporting its motion to dismiss. Here, the District has failed to establish that it made reasonable efforts, and documented those efforts, to obtain Parent's participation in the resolution session: (i) the District's motion is not supported by a sworn declaration, (ii) no admissible evidence is submitted regarding when the invitation was extended to Parent, the content of the "phone invite" or to whom it was directed, and (iii) no copy of the written invitation is attached. Therefore, the motion to dismiss is denied.

Nonetheless, the District established that no informal resolution session took place, for whatever reason. Therefore, the dates in this matter will be reset to provide the parties with an additional 30 days to participate in a resolution session. If Parent fails to participate after that time, the District may renew its motion to dismiss upon an adequate showing.

ORDER

1. The District's motion to vacate dates on the ground that it has not received a copy of Student's complaint is denied.
2. The District's motion to dismiss is denied, without prejudice to being renewed if Parent does not participate in a resolution session.
3. All previously scheduled dates are vacated. Student's complaint shall be deemed filed as of the date of this Order, so that the parties have an additional 30 days in which to participate in an informal resolution session. OAH will issue a new scheduling order.

Dated: August 7, 2012

/s/

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ALEXA HOHENSEE  
Administrative Law Judge  
Office of Administrative Hearings