

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LAKESIDE UNION SCHOOL DISTRICT  
AND KERN COUNTY  
SUPERINTENDENT OF SCHOOLS.

OAH Case No. 2016030643

ORDER DENYING RESPONDENTS'  
MOTION TO DISMISS, OR IN THE  
ALTERNATIVE, TO EXTEND  
PROCEDURAL TIMELINES

On March 9, 2016, Parent on behalf of Student filed a due process hearing request naming Lakeside Union School District and Kern County Superintendent of Schools.

On March 18, 2016, Respondents filed a notice of resolution session outcome, stating that Parent and Respondents had agreed in writing to waive the resolution session.

On April 6, 2016, Respondents filed a motion to dismiss Student's complaint, or in the alternative to extend procedural timelines, due to Parent's failure to participate in a mandatory resolution session.

APPLICABLE LAW

A local educational agency is required to convene a resolution meeting with the parents and the relevant members of the Individualized Education Program team within 15 days of receiving notice of the Student's complaint. (20 U.S.C. § 1415(f)(1)(B)(i)(I);<sup>1</sup> 34 C.F.R. § 300.510(a)(1) (2006).<sup>2</sup>) The resolution session need not be held if it is waived by both parties in writing or the parties agree to use mediation.

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 Local Education Agency 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).)

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<sup>1</sup> All statutory citations are to title 20 United States Code unless otherwise indicated.

<sup>2</sup> All subsequent references to the Code of Federal Regulations are to the 2006 version.

DISCUSSION

Respondents' motion seeks to dismiss Student's complaint, or in the alternative to extend the procedural deadlines, because Parent has not responded to District's attempts to schedule a resolution session. Respondents' motion is supported by the declaration of the special education director for District, describing attempts to schedule an informal resolution session, or obtain a waiver of the resolution session from Parent, on March 10 and 11, 2016. Her declaration states that Parent did not appear at a resolution session or execute the proposed waiver.

However, Respondents filed with OAH a document entitled "Notice of Resolution Session Outcome" on March 18, 2016, indicating that all parties had entered into a written waiver of the resolution session. Neither the moving papers nor the declaration addressed this contradiction. Until and unless Respondents can satisfactorily explain why they notified OAH of a written agreement to waive the resolution session that they now claims does not exist, the record in this matter shows that Parent has complied with the requirements for proceeding to due process.

Accordingly, Respondents' motion to dismiss, or to extend the procedural timelines, is denied.

IT IS SO ORDERED.

DATE: April 7, 2016

DocuSigned by:  
  
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ALEXA J. HOHENSEE  
Administrative Law Judge  
Office of Administrative Hearings