

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CAPISTRANO UNIFIED SCHOOL  
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2016060615

ORDER DENYING MOTION TO  
DISMISS

On June 10, 2016, District filed with the Office of Administrative Hearings a Due Process Hearing Request (complaint) against Student.

On June 20, 2016, Student filed a motion to dismiss the Due Process Hearing contending that District failed to hold a resolution session before it filed its hearing request. On June 23, District filed an opposition to the Motion to Dismiss.

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. (§ 1415(f)(1)(B)(i)(IV); 34 C.F.R. § 300.510(a)(3).) There are no provisions of law that allow a parent or a Local Education Agency to unilaterally waive the resolution meeting. (71 Fed. Reg. 47602, No. 156 (Aug. 14, 2006.)

DISCUSSION

Student's motion misinterprets the law in arguing that District is required to hold a resolution session when District files the complaint. Student failed to provide any legal basis

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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.

for its motion. Districts are required to hold a resolution session upon receiving notice of the *Student's* complaint. There is no provision requiring Districts to hold a resolution session when the District files the complaint. Accordingly, Student's motion to dismiss is denied.

ORDER

1. The motion to dismiss is denied.
2. The matter shall proceed as scheduled.

DATE: June 30, 2016

DocuSigned by:  
*Marc Levine*  
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MARC LEVINE  
Administrative Law Judge  
Office of Administrative Hearings