

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

ELK GROVE UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2009060162

ORDER ON MOTION TO CONTINUE
AND MOTION TO DISMISS AND
SETTING TSC

Student filed an amended due process hearing request (complaint) on August 28, 2009, which names Elk Grove Unified School District (District) as respondent. A scheduling order set a mediation for October 7, 2009, a prehearing for October 19, 2009 and a hearing date of October 27, 2009.

On October 8, 2009, Student filed a motion to continue the prehearing and hearing dates based upon the need to prepare for additional concerns and in order to subpoena additional witnesses. On October 14, 2009, District filed its opposition to the continuance and motion to dismiss. The essence of its motion to dismiss is that Student has failed to participate in the resolution session which has not been waived despite the District having made reasonable efforts to contact Student and scheduled the resolution session. An amended complaint serves to restart all applicable time frames including those for resolution session

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

Here, no resolution session occurred within 15 days of Student's filing of her complaint, and the District has not waived the resolution session requirement. Parent is

required to participate in a resolution session before the commencement of a due process hearing, 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. As discussed above, the IDEA makes a resolution session a prerequisite to hearing in order to encourage parties to informally resolve disputes. Accordingly, to affect the spirit of IDEA, Student shall be given an opportunity to attend a resolution session prior to dismissal. The resolution session shall be held no later than October 30, 2009. Should Student fail to attend this resolution session, the matter will be dismissed.

The current prehearing and hearing dates are vacated and replaced by a resolution session. The parties shall then attend a status conference/trial setting conference on November 2, 2009 at 10:00AM at which time the parties shall report on whether the resolution session occurred. If a resolution session occurred, the parties shall be prepared to discuss mutually agreeable prehearing conference and hearing dates.

ORDER

1. This matter will be dismissed unless Student attends a resolution session on or before October 30, 2009 at the District's office. No requests for continuances or postponement of this date will be entertained.
2. The previous prehearing and hearing date is vacated and continued to a date to be determined upon report of the parties in accordance with the following: The parties shall participate in a telephonic status conference and/or trial setting conference on November 2, 2009 at 10:00 a.m. If Student has failed to participate in the resolution session as ordered, the matter will be dismissed at that time. If Student participated in the resolution session, the parties shall report the date of that the resolution session occurred and they shall also be prepared to discuss mutually agreeable dates for a prehearing conference and hearing dates. The parties may also request a mediation date at that time if they desire.
3. Should Student attend the resolution session, the timelines for hearing and decision shall be calculated from that date pursuant to Title 20 United States Code section 1415(f)(1)(B).

IT IS SO ORDERED.

Dated: October 14, 2009

/s/

ANN F. MACMURRAY
Presiding Administrative Law Judge
Office of Administrative Hearings