

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ALVORD UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2010050367

ORDER DENYING MOTION TO
DISMISS WITHOUT PREJUDICE;
SETTING RESOLUTION SESSION;
VACATING DATES; AND
RESETTING TIMELINES

On June 17, 2010, Alvord Unified School District (District) filed a motion to dismiss the due process hearing request (Motion). District's Motion asserts that the matter should be dismissed because District did not waive its right to a resolution session and Student's parent had not attended one despite District's efforts. In support of the Motion, District presented evidence: that it notified Student's parent by letter on May 20, 2010 of the need to attend "ADR;" that on May 25, 2010, District sent a follow-up letter to the address of Student's parent explaining the need to meet for a resolution session, and that various telephone calls and emails between District and parent and/or parent's attorney did not result in an agreement to attend a resolution session. On June 21, 2010, Student opposed the Motion, asserting that District had not met the requirement of making a reasonable effort to obtain parent's attendance prior to filing the Motion. On June 23, 2010, District filed a reply that contained additional evidence. The evidence in the reply demonstrated that District's correspondence to parent was sent to the correct address. A prehearing conference is scheduled for June 30, 2010 at 1:30 p.m. and the due process hearing is scheduled for July 6, 2010.

As discussed below, District is correct that it is entitled to a resolution session prior to Student proceeding to hearing. However, Student will be given a final chance to attend a resolution session prior to dismissal. Thus, the parties will be ordered to attend a resolution on June 30, 2010 at 1:30 p.m., the date and time calendared for the prehearing conference. If Student's parent fails to participate on that date, District may file a new motion to dismiss.

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, the evidence presented by District demonstrates that it made reasonable efforts to obtain the attendance of Student's parent at a resolution session. District's May 20, 2010 letter, although erroneously referring to "ADR" put Student's parent on notice of the District's intent to hold the resolution session and resulted in a reply from Student's parent. At all times, Student's parent was represented by a law firm that specializes in education law, such that Student's parent was presumably correctly advised by counsel regarding the need for a resolution session. District also presented persuasive evidence that it sent a follow-up letter to Student's parent on May 25, 2010 to the correct address. Although Student's parent denies receipt of the letter, it is undisputed that the District was in telephone contact with Student's parent by June 4, 2010 to try to arrange for a resolution session. Student's parent and the attorney for Student's parent declined to participate in resolution sessions on dates that the District was unavailable, and the District declined to participate on a date that Student's attorney stated she was available.

The above facts are sufficient to establish that the District made reasonable efforts to schedule a resolution session and that no resolution session occurred within the 30 day timeline. However, because the District also declined to participate in at least one date that was convenient to Student's parent and attorney, immediate dismissal is not warranted. Instead, dismissal will only be granted if Student's parent fails to attend a resolution session at the date and time set forth in this Order. Because neither party has requested a continuance of the June 30, 2010 prehearing conference, the attorneys for both sides are presumed to be available on that date and it will be ordered as the resolution session. The 45-day timeline for issuance of the decision will be started from that date, all other dates will be vacated, and a new mediation, prehearing conference, and hearing date will be set. If Student fails to participate in the resolution session as ordered, District may re-file its motion to dismiss based on Student's failure to comply with this Order.

ORDER

1. District's Motion to Dismiss is denied without prejudice to District renewing the motion if Student fails to comply with the terms of this Order.
2. All previously scheduled dates are vacated.

3. The parties shall attend a resolution session at the District's office on June 30, 2010 at 1:30 p.m., the date originally scheduled for the prehearing conference. The parties may meet earlier that date if they can agree to a time.
4. The 45-day timeline for issuance of a decision shall begin to run on June 30, 2010.
5. The following new dates are scheduled:

Mediation:	July 6, 2010 at 9:30 a.m.
Telephonic PHC:	July 12, 2010 at 10:00 a.m.
Due Process Hearing:	July 19, 2010 at 9:30 a.m.

Dated: June 24, 2010

/s/

RICHARD T. BREEN
Administrative Law Judge
Office of Administrative Hearings