

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2010120118

ORDER DENYING MOTION TO PUT
DUE PROCESS HEARING IN
ABEYANCE AND GRANTING
MOTION TO EXTEND PROCEDURAL
TIMELINES

On December 1, 2010, Parent filed with the Office of Administrative Hearings (OAH) a due process hearing request (complaint) on behalf of Student, naming District as the respondent.

On January 4, 2011, District filed a motion to put the due process hearing in abeyance and extend procedural timelines, 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 resolution 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) (2006).) The resolution session need not be held if it is waived by both parties in writing or the parties agree to use mediation. (20 U.S.C. § 1415(f)(1)(B)(i)(IV); 34 C.F.R. § 300.510(a)(3) (2006).) There are no provisions of law that allow a parent or an LEA to unilaterally waive the resolution meeting. (71 Fed. Reg. 47602, No. 156 (Aug. 14, 2006).)

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) (2006).)

DISCUSSION

District's motion is supported by the sworn declaration of Due Process Specialist Sharon Snyder, which indicates that District sent a letter to Parent on December 9, 2010 offering to hold a resolution session on December 20, 2010. District was prepared to proceed with the resolution session on that date. Parent did not attend. District called Parent on December 20, 2010 at the telephone number indicated on the complaint, but received no answer or answering machine. Thereafter, on December 22, 2010, District was informed that Parent had moved to an unknown location, but that District's December 9, 2010, letter ought to have been forwarded to Parent.

Parent is required to participate in a resolution session before a due process hearing may be commenced. There has been no agreement to waive the resolution session or proceed to mediation in lieu of the resolution session in this case. District has established that it made reasonable efforts to obtain Parent's participation in a resolution session prior to filing its motion, and it has documented those reasonable efforts in its motion. Student has failed respond to District's motion and has not provided OAH with an adequate reason for failing to participate in the resolution session.

However, OAH does not hold matters in abeyance or take matters off calendar once filed. Therefore, District's motion is treated as a motion to extend procedural timelines to enable a resolution session to be scheduled, and as such is granted. Accordingly the timeline in which to complete a resolution session will be extended an additional 30 days from the date of this order, and all timelines will be reset. If Parent fails to attend a resolution session within that time, District shall file a motion to dismiss.

ORDER

1. District's request to put the due process hearing in abeyance is denied.
2. District's motion is treated as a motion to extend the procedural timelines in this case, and as such is granted.
3. All previously set dates in this case are vacated.
4. The parties are ordered to participate in a resolution session within 30 days of this Order. If Parent fails to attend a resolution session within that time, District shall file a motion to dismiss.
6. Within five business days of this Order, OAH shall issue a new Scheduling Order in the case.

7. The timelines for hearing established pursuant to Title 20 United States Code section 1415(f)(1)(B) shall recommence as of the date of this order.

Dated: January 13, 2011

/s/

JUNE R. LEHRMAN
Administrative Law Judge
Office of Administrative Hearings