

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

HAYWARD UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012090581

ORDER DENYING MOTION TO
DISMISS AND EXTENDING
PROCEDURAL TIMELINES

On September 17, 2012, Mother, on behalf of Student, filed with the Office of Administrative Hearings (OAH) a due process hearing request (complaint) against the Hayward Unified School District (District). On October 31, 2012, attorney James Meeker filed, on behalf of the District, a motion to dismiss due to Mother'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 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).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

The District's motion, supported by sworn declaration of Eydie Dalton-Sausedo, District Special Education Program Coordinator, states that on September 10, 2012, the District contacted Mother to schedule a resolution session for either September 12, 13 or 14,

¹ All subsequent references to the Code of Federal Regulations are to the 2006 version.

2012. On September 11, 2012, Mother informed the District that she would not presently participate in a resolution session, and would contact the District when she could participate. To date, Mother has not contacted the District to schedule a resolution session.

Student's parent is required to participate in a resolution session before a due process hearing may be commenced, 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.

The parties have not agreed to waive the resolution or proceed to mediation in lieu of the resolution session. Moreover, District established that it made reasonable efforts to obtain Student's parent's participation in a resolution session prior to filing its motion, and it documented those reasonable efforts in its motion. Student has failed to respond to District's motion and has not provided OAH with an adequate reason for failing to participate in a resolution session within 30 days.² However, dismissal of Student's complaint is not presently necessary, and an extension of procedural timelines is warranted. Therefore, the District's motion to dismiss is denied. Instead, the procedural timelines are reset, and a resolution session shall be held within 10 business days from the date of this order.

ORDER

1. The District's motion to dismiss is denied.
2. The parties are ordered to participate in a resolution session within 10 business days of the date of this order. The District shall schedule the resolution session within three business days of this order.
3. All previously scheduled dates are vacated. The procedural timelines are reset as of the date of this order, and OAH shall serve an amended scheduling order. Nothing in this order bars the District from filing a motion to dismiss if Mother does not attend the newly scheduled resolution session.

Dated: November 5, 2012

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings

² Mother stated in Student's October 29, 2012 motion to reset timelines that she would now like to participate in a resolution session and for the procedural timelines to be reset to permit her participation.