

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LYNWOOD UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2013061043

ORDER DENYING MOTION TO  
DISMISS AND EXTENDING  
PROCEDURAL TIMELINES

On June 25, 2013, Parent, on behalf of Student, filed with the Office of Administrative Hearings (OAH) a due process hearing request (complaint) against the Lynwood Unified School District (District). On July 19, 2013, attorney Brinkley E. Wilson filed, on behalf of the District, a motion to dismiss 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 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).<sup>1</sup>) 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 states that on July 3, 2013, the District contacted Parent by letter to schedule a resolution session for either July 10 or 11, 2013. Parent did not respond

---

<sup>1</sup> All subsequent references to the Code of Federal Regulations are to the 2006 version.

to the letter or present herself at the District on either of the proposed dates. To date, Parent has not contacted the District to schedule a resolution session.

Parent is required to participate in a resolution session before a due process hearing may be commenced, unless the parties agree to waive the resolution session. OAH has discretion to dismiss the matter if a 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 session 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. 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, a new scheduling order will be sent to the parties, and a resolution session shall be held.

#### ORDER

1. The District's motion to dismiss is denied.
2. The parties are ordered to participate in a resolution session or jointly agree to waive the resolution session.
3. All previously scheduled dates are vacated. The procedural timelines are reset as of the date of this order, and OAH shall serve a new scheduling order. Nothing in this order bars the District from filing a motion to dismiss if Parent does not attend the newly scheduled resolution session.

Dated: July 25, 2013

/s/

---

MARGARET BROUSSARD  
Administrative Law Judge  
Office of Administrative Hearings