

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ADELANTO ELEMENTARY SCHOOL
DISTRICT.

OAH CASE NO. 2014100686

ORDER FOLLOWING PREHEARING
CONFERENCE, DENYING
DISTRICT'S MOTION TO DISMISS
WITHOUT PREJUDICE, VACATING
ALL DATES, AND RESETTING
TIMELINES

On December 1, 2014, a telephonic prehearing conference was held before Administrative Law Judge Sabrina Kong, Office of Administrative Hearings. Warren Finn, Attorney at Law, appeared on behalf of Student and Parent (collectively, Student).¹ Vivian Billups, Attorney at Law, appeared on District's behalf. The PHC was recorded.

District's Motion to Dismiss was the primary subject of the PHC. Student filed a request for due process hearing (complaint) on October 14, 2014. On November 21, 2014, District filed a Motion to Dismiss the complaint on the basis that Student failed to participate in a resolution session. The motion was supported by a declaration of District's Program Manager for Due Process for the Desert Mountain Special Education Local Plan Area. No opposition was filed.

A local educational agency 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);² 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. (§ 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).)

¹ Student was self-represented at the time of the due process complaint filing. At the PHC, Mr. Finn stated he filed a Notice of Representation with OAH on November 19, 2014, which had not appeared on OAH's file at the time of the PHC. Based on Mr. Finn's representation that he represented Student and OAH's inability to reach Parent at the time of the PHC, the PHC proceeded with Mr. Finn as Student's counsel.

² All statutory citations are to Title 20 United States Code unless otherwise indicated.

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).) 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) (2006).)

District notified Parent of the October 31, 2014 resolution session by certified mail with return receipt indicating that Parent signed for the certified mail. District also left several voicemail messages for parent to confirm attendance at the October 31, 2014 resolution session. Parent did not return the call, and did not attend the October 31, 2014 resolution session. On October 31, 2014, District sent a second letter to parent setting a second resolution session for November 6, 2014, and later called parent to confirm her attendance. Parent did not return District's call, and did not attend the November 6, 2014 resolution session.

District's Motion to Dismiss is denied without prejudice. However, since Student did not participate in a resolution session, all dates are vacated. The October 14, 2014 due complaint is deemed filed on December 1, 2014. OAH will issue a scheduling order setting new mediation, hearing and PHC dates based on the filing date of December 1, 2014. Student will be given another opportunity to participate in a resolution session. If Student does not participate in the resolution session after the LEA convenes one within 15 days of December 1, 2014, District may file another motion to dismiss.

IT IS SO ORDERED.

DATE: December 1, 2014

/s/
SABRINA KONG
Administrative Law Judge
Office of Administrative Hearings