BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SAN DIEGO UNIFIED SCHOOL DISTRICT.	OAH Case No. 2015040866 ORDER GRANTING MOTION TO ADVANCE DUE PROCESS TIMELINE

On April 10, 2015, Parents on behalf of Student filed a Request for Due Process Hearing with the Office of Administrative Hearings, naming San Diego Unified School District. On April 27, 2015, Student filed a Motion to Begin Due Process Hearing Timeline, stating that the District failed to schedule a resolution meeting within 15 days of receiving notice of the complaint. On April 29, 2015, District responded, acknowledging that it had not scheduled the resolution session due to numerous requests for due process filed against District, and subsequently scheduled resolution sessions for those cases. Student filed a reply on April 30, 2015.

APPLICABLE LAW

A local educational agency is required to convene a meeting with the parents and the relevant members of the Individualized Education Program 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).) However, if the LEA fails to hold the resolution meeting within 15 days of receiving notice of the complaint, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline. (34 C.F.R. § 300.510(b)(5); Ed. Code, § 56501.5, subd. (e)(2).)

[1] Unless otherwise stated, all references are to the 2006 edition of the Code of Federal Regulations.

DISCUSSION

District acknowledges that it failed to hold a resolution session within 15 days of its receipt of Student's complaint, as it has proposed a resolution session for May 6, 2015. District asserts that it could not schedule a resolution session with 15 days of its receipt of the complaint, as it received around the time of Student's complaint, nearly twice the number of hearing requests as usual. District asserts that, even though it has not timely held the resolution session, OAH should deny the request because it has scheduled the resolution session for May 6, 2015. District argues that the intent of the Individuals with Disabilities Education Act to promote informal resolution of hearing requests, and that the applicable Federal and California law, do not require automatic timeline advancement.

However, Parents are entitled to seek an order beginning the due process timeline. District argues that title 34 Code of Federal Regulations, section 300.510(b)(5) and Education Code, section 56501.5, subdivision (e)(2), make the timeline advancement discretionary; however the regulation's language indicates that it is within a parent's discretion to file so as not to make the advancement automatic if an LEA fails to timely hold a resolution session. Once the request is filed, the law does not provide any discretion to OAH to deny the request, if the resolution session is not timely held. Therefore, the motion is granted.

ORDER

1. Student's motion to advance the due process hearing timeline is granted.

2. All presently scheduled mediation, prehearing conference and hearing dates are vacated.

3. OAH shall issue a scheduling order that sets mediation, prehearing conference and hearing dates based on a decision timeline that commences on May 1, 2015.

DATE: May 1, 2015

/s/

PETER PAUL CASTILLO
Presiding Administrative Law Judge
Office of Administrative Hearings