

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TEHACHAPI UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015050839

ORDER GRANTING MOTION TO
EXTEND PROCEDURAL TIMELINES

On May 12, 2015, attorney Andrea M. Marcus, on behalf of Student, filed with the Office of Administrative Hearings an amended due process hearing request against the Tehachapi Unified School District.

On May 27, 2015, attorney Stacy L. Inman, on behalf of District, filed a motion to 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 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).) 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).)

¹ All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

DISCUSSION

District's motion, supported by sworn declaration of Kathleen Siciliani, District Director of Student Services, indicates that Student did not attend the resolution session scheduled for May 27, 2015. On May 13, 2015, Ms. Siciliani sent Parent a letter to schedule the resolution session for May 18, 2015. On May 15, 2015, Parent responded via email that he wished to waive the resolution session. On May 18, 2015, by email, Ms. Siciliani informed Parent that District did not agree to waive the resolution session and the resolution session had been rescheduled for May 27, 2015, at 9:00 a.m. On May 26, 2015, Ms. Siciliani called Parent but was unable to reach him. She left Parent a voicemail message to remind him of the resolution session. Ms. Siciliani sent Parent a similar email on May 26, 2015, to remind him of the resolution session. Parent did not attend the May 27, 2015 resolution session, or contact District to reschedule the 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.

There has been no agreement to waive the resolution or proceed to mediation in lieu of the resolution session in this case. Moreover, District established that it made reasonable efforts to obtain Parent's participation in a resolution session prior to filing its motion to extend procedural timelines, 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. Therefore, District's motion to extend procedural timelines is granted. A resolution session shall be held within 10 business days from the date of this order.

ORDER

1. District's motion to extend procedural timelines is granted.
2. The parties are ordered to participate in a resolution session within 10 business days of the date of this order. 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 issue a new scheduling order. Nothing in this order bars District from filing a motion to dismiss if Parent does not attend the resolution session.

DATE: June 11, 2015

/s/

PAUL H. KAMOROFF
Administrative Law Judge
Office of Administrative Hearings