

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LAMONT SCHOOL DISTRICT AND
KERN HIGH SCHOOL DISTRICT.

OAH Case No. 2015050842

AMENDED ORDER GRANTING
REQUEST TO EXTEND TIME LINES
AND RESETTING PROCEDURAL
TIME LINE

On June 10, 2015, the undersigned issued an order denying Lamont School District's request to extend the procedural time lines in this matter for failure by Parent to participate in a resolution session. That order was based upon Kern High School District's Notice of Insufficiency being sustained on May 28, 2015, which granted Student leave to amend the complaint in this matter. The June 10, 2015 order denying Lamont's request failed to consider that the complaint was found insufficient only as to Kern and the May 28, 2015 order continued the time line as to Lamont. The undersigned has reconsidered the June 10, 2015 order.

APPLICABLE LAW

A local educational agency is required to convene a resolution 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).) 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).)

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).)

DISCUSSION

Student filed this action against both Lamont and Kern. Lamont's motion establishes, through sworn declaration, that it scheduled a resolution session and made attempts to ensure that Parent was notified and could participate. Lamont scheduled a resolution session on May 20 and 22, 2015. Parent did not attend either session. There is no evidence that the parties have waived the resolution session.

On May 28, 2015, the Office of Administrative Hearings found Student's complaint to be insufficient as to Kern. No finding was made as to Lamont because Lamont did not file a Notice of Insufficiency. Accordingly, all dates as to Lamont were confirmed by the May 28, 2015 order.

As neither Lamont nor Student has agreed to waive resolution session, Lamont is entitled to an extension of the procedural time lines in order to convene a resolution session. Parent should attend the resolution session as the due process hearing cannot proceed unless the resolution session is held. Accordingly, Lamont's request to extend the procedural time lines is granted.¹

ORDER

1. The June 10, 2015 order denying Lamont's request to extend the procedural time lines is vacated.
2. Lamont's request to extend procedural time lines is granted.
3. The procedural time lines are reset as of the date of this order. OAH shall issue a new scheduling order.

DATE: June 11, 2015

/s/

BOB N. VARMA
Division Presiding Administrative Law Judge
Office of Administrative Hearings

¹ Should Student file an amended complaint pursuant to the May 28, 2015 order, the time lines will be reset again. Should Student fail to file an amended complaint, the complaint as to Kern will be dismissed.