

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
SPECIAL EDUCATION DIVISION
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

Petitioner,

vs.

LOS ANGELES UNIFIED SCHOOL
DISTRICT,

Respondent.

OAH CASE NO. N2006110235

**ORDER GRANTING DISTRICT'S
REQUEST TO SUSPEND DATES FOR
DUE PROCESS HEARING**

On December 5, 2006, My Huynh, attorney for the District, filed a motion to put the due process hearing in abeyance because Student's parents failed to participate in a mandatory resolution session. On December 7, 2006, Office of Administrative Hearings (OAH) provided notice to Student's attorney that any response to the motion must be received within five business days. No response has been received.

DISCUSSION

The District's motion included a sworn declaration signed under penalty of perjury from Shari Robertson, specialist for the District's due process department, attesting to the notice of the mandatory resolution session and the failure of the Student to participate. According to the affidavit, the District received the due process hearing request (complaint) from Student on November 6, 2006. On November 9, 2006, the District sent a letter to Student's parents and Grace Cheng, attorney for Student, scheduling an informal resolution meeting on November 21, 2006. On November 20, 2006, Ms. Robertson contacted Student's mother by telephone who told her that she was unaware of the resolution session or that a complaint had been filed. Ms. Robertson attended the resolution session on November 21, 2006, but no one appeared on behalf of Student.

The local educational agency (LEA) shall convene a meeting with the parents and the relevant members of the Individualized Education Program (IEP) 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).) The resolution session need not 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 a parent does 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).) After the District has made reasonable attempts to secure the participation of the parents in the resolution session and has documented those attempts, at the end of the 30 day resolution period, the District may request that OAH dismiss the complaint.¹ (34 C.F.R. §300.510(b)(4).)

Here, the District has duly documented its attempts to hold a resolution session within 15 days of the receiving the complaint and the parent's failure to participate in the resolution session. Accordingly, the timelines for a due process hearing are suspended until the parents participate in the resolution session, or the parties otherwise agree to waive it or agree to mediation.

ORDER

1. The District's request to suspend the due process hearing timelines is granted. Accordingly, all dates that have been set in this matter are vacated.
2. The parties are ordered to immediately notify OAH in writing upon holding a resolution session so that the timelines may be restarted.
3. The parties are ordered to attend a telephonic trial setting conference on January 11, 2007, at 10:00 a.m. to determine the status of the case and set dates for due process hearing if the resolution session has occurred.
4. Nothing in the order precludes either party from exercising any rights otherwise granted to it by statute.

Dated: December 18, 2006

RICHARD M. CLARK
Administrative Law Judge
Special Education Division
Office of Administrative Hearings

¹ "If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented using the procedures in §300.322(d)), the LEA may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent's due process complaint." (34 C.F.R. §300.510(b)(4).)