BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

SAN DIEGO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023080528

ORDER FOLLOWING PREHEARING CONFERENCE, DENYING MOTION TO DISMISS, GRANTING CONTINUANCE TO PERMIT RESOLUTION SESSION OR MEDIATION

DECEMBER 29, 2023

On December 29, 2023, Administrative Law Judge Brian H. Krikorian, Office of Administrative Hearings held a telephonic prehearing conference. The Administrative Law Judge will be referred to as an ALJ. The prehearing conference will be referred to as a PHC.

The PHC was commenced at 10:00 a.m. No appearance was made by Student, who is represented by Parent. The PHC was trailed until 10:15 a.m. Parent did not

appear, although a Zoom invitation was sent to Parent's last known email address. Rebecca Diddams and Juliana Mascari, Attorneys at Law, appeared on behalf of San Diego Unified School District. Royal Lord, Ed.D appeared representing San Diego Unified. The PHC was recorded.

On August 16, 2023, Student filed a due process hearing request with OAH naming San Diego Unified. The due process hearing request is referred to as a complaint. On December 26, 2023, San Diego Unified filed a motion to dismiss or extend the timelines for Student's failure to participate in a mandatory resolution session. Student did not respond to the motion.

APPLICABLE LAW

A local educational agency is required to meet with the parents and Student's relevant Individualized Education Program team members within 15 days of receiving Student's complaint. (20 U.S.C. § 1415(f)(1)(B)(i)(I); 34 C.F.R. § 300.510(a)(1) (2006). The meeting called a resolution session, can be waived in writing by both parties or if they agree to use mediation. (34 C.F.R. § 300.510(a)(3).) If the parents do not attend the resolution session, and it was not waived, there is no due process hearing until the resolution session waived or held. (34 C.F.R. § 300.510(b)(3).) The respondent can request the case be dismissed after the 30-day period, if it documented reasonable efforts to hold the resolution session and the parents did not attend. (34 C.F.R. §300.510(b)(4).)

DISCUSSION

San Diego Unified was served with Student's complaint on or about August 16, 2023. San Diego Unified provided Student with a response on August 22, 2023, and requested that an early resolution session take place on September 7, 2023. San Diego

Unified did not receive a response. From September 1 through September 12, 2023, Dr. Lord attempted to convene a resolution session, but did not receive a response from counsel. On September 12, 2023, Dr. Lord sent a letter to Student's counsel setting September 15, 2023, as the resolution session. On September 14, 2023, one of Student's counsel called Dr. Lord and indicated that Student would prefer moving forward with a mediation. According to Dr. Lord's declaration testimony, he agreed to on the condition that the parties would continue to negotiate leading up to the mediation. A mediation was set for November 7, 2023.

On October 25, 2023, Student's counsel filed a Substitution of Attorney, substituting in Parent for counsel. The proof of service indicates that the Substitution was served by fax on San Diego Unified. Dr. Lord testified in his declaration, and confirmed at the PHC, that there is no record of San Diego Unified receiving the Substitution. Dr. Lord was orally informed by counsel prior to November 7, 2023, that Student's counsel had withdrawn. Mediation was cancelled by Student's attorney. Dr. Lord then contacted Parent directly, who advised Dr. Lord not to contact Parent "ever again." Dr. Lord sent another email to Parent on December 14, 2023, requesting a resolution session for January 2, 3 or 4, 2024. He received no response.

34 C.F.R. § 300.510(a)(3) provides that the resolution meeting can be waived in writing by both parties, or if the parties agree to use mediation. Here there is no waiver in writing. The parties orally agreed to mediate. The statute is ambiguous if an agreement to mediate must be in writing to constitute a waiver. However, based upon the record and the declaration testimony of Dr. Lord, it appears that San Diego Unified acted in good faith and made repeated efforts to resolve the matter as required by law over the last four months. Once Student was unrepresented, Dr. Lord continued those efforts, and Parent did not cooperate.

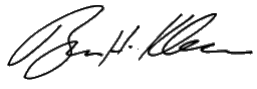
Student is required to participate in a resolution session or mediation before a due process hearing may be commenced. There was no written agreement to waive the resolution or proceed to mediation in lieu of the resolution session. Respondent established that it made reasonable efforts to obtain parental participation before filing its motion to dismiss. However, because Student is not represented by counsel, San Diego Unified's motion to dismiss is denied without prejudice.

Student is ordered to participate in a mediation or resolution session with San Diego Unified by no later than January 31, 2024. The hearing in this matter is continued to March 19, 20, and 21, 2024, and the PHC is continued to March 8, 2024, at 10:00 a.m. If Student does not cooperate or fails to attend a mediation or resolution session by January 31, 2024, San Diego Unified may renew its motion to dismiss.

ORDER

1. District's motion to dismiss is denied without prejudice.
2. Student is ordered to attend a resolution session or mediation by January 31, 2024.
3. The PHC is continued to March 8, 2024, at 10:00 a.m. The due process hearing is continued to March 19, 20 and 21, 2024.

IT IS SO ORDERED



Brian H. Krikorian
Administrative Law Judge
Office of Administrative Hearings