BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

MODESTO CITY SCHOOLS.

OAH CASE NUMBER 2022080550

ORDER DENYING REQUEST TO DELAY DUE PROCESS HEARING TIMELINES

SEPTEMBER 30, 2022

On August 19, 2022, Parents on behalf of Student, filed a Request for Due Process Hearing, called a complaint, with the Office of Administrative Hearings, called OAH, naming Modesto City Schools. Modesto City Schools will be called Modesto. On September 21, 2022, Modesto filed a Moton to Dismiss or in the alternative, a request to delay the due process hearing timelines due to Student's and Parents' failure to adhere to early resolution session requirements. Modesto argued Parents did not hold educational rights for Student, who was 18 years old at the time of filing, and that Student, not Parents, should have attended the early resolution meeting. OAH issued a separate order on the Motion to Dismiss.

On September 26, 2022, Student filed an opposition to Modesto's Motion to Dismiss and argued against the due process hearing timelines being delayed because Parents held educational rights for Student, and Parents participated in an early resolution meeting on September 16, 2022. On September 27, 2022, Modesto filed a reply to Student's opposition and argued that Parents did not obtain Student's educational rights until September 16, 2022, and therefore, Student should have attended an early resolution meeting within 15 days of filing the complaint.

Within 15 days of receiving notice of a parent's due process complaint, and prior to a due process hearing, school districts must hold an early resolution meeting with the parent and relevant members of the student's individualized education program team. (20 U.S.C. § 1415(f)(1)(B)(i)(I); 34 C.F.R. § 300.510(a)(1).) The purpose of this meeting is to allow parents to discuss the complaint, and the school district an opportunity to resolve the complaint. (20 U.S.C. § 1415(f)(1)(B)(i)(IV); 34 C.F.R. § 300.510(a)(2).) Parents and school districts may waive this meeting in writing or if they agree to use mediation. (20 U.S.C. § 1415(f)(1)(B)(i)(IV); 34 C.F.R. § 300.510(a)(3).)

If the school district has not resolved the complaint to the satisfaction of the parent within 30 days of receiving the complaint, the due process hearing may occur. (34 C.F.R. § 300.510(b)(1).) Except where the parents and school district have agreed to waive the resolution meeting or participate in mediation, a parent's failure to participate in the resolution meeting will delay the timelines for the due process hearing until the meeting is held. (34 C.F.R. § 300.510(b)(3).) If, after reasonable efforts, the school district is unable to obtain the parent's participation at the resolution meeting within 30 days of receiving the complaint, the school district may request that OAH dismiss the complaint. (34 C.F.R. §300.510(b)(4).)

Modesto did not establish the due process hearing timelines in this case should be delayed. Parents and Modesto participated in a resolution meeting on September 16, 2022, less than 30 days after Modesto received the complaint. Filed with Student's opposition, was a document dated September 16, 2022, that stated "I, [Student], hereby continue to assign all my [e]ducational [r]ights to my Parents…" Therefore, Parents held Student's educational rights when they participated in the resolution meeting. Modesto's argument that Parents or Student should have attended the resolution meeting within 15 days is unpersuasive. The IDEA requires the filing party to participate in a resolution meeting within 30, not 15 days. Once a party participates in the resolution meeting, a due process hearing can be held.

Accordingly, Modesto's request to delay the due process hearing timelines is denied. The case will proceed as scheduled.

IT IS SO ORDERED.

Tara Doss

Tara Doss

Administrative Law Judge

Office of Administrative Hearings