BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: SWEETWATER UNION HIGH SCHOOL DISTRICT, v. PARENTS ON BEHALF OF STUDENT,	OAH Case No. 2016090871
PARENTS ON BEHALF OF STUDENT, v. SWEETWATER UNION HIGH SCHOOL DISTRICT.	OAH Case No. 2016080950 ORDER DENYING AS MOOT STUDENT'S MOTION TO BEGIN DUE PROCESS TIMELINE; ORDER DENYING DISTRICT'S IMPLIED REQUEST TO EXTEND TIMELINE

PROCEDURAL BACKGROUND

Parents on behalf of Student filed a request for due process (complaint) with the Office of Administrative Hearings on August 22, 2016, in OAH case number 2016080950, naming the Sweetwater Union High School District. OAH issued a scheduling order in this matter on August 25, 2016, setting mediation, prehearing conference, and due process hearing dates. The due process hearing was scheduled to begin on October 18, 2016. This date was based on a 75-day timeline for student-filed complaints, contemplating a 30-day resolution period and a 45-day statutory timeline beginning to run after the 30-day resolution period had elapsed, as required under the Individuals with Disabilities Education Act.

District filed a complaint on September 26, 2016, in OAH case number 2016090871, naming Parents on behalf of Student. OAH issued a scheduling order on that same date, setting mediation, prehearing conference, and due process hearing dates. The hearing in District's case was scheduled to begin on October 25, 2016. This date was based upon a 45-day timeline as the IDEA does not require a resolution session to be held in cases filed by school districts.

On October 4, 2016, OAH granted District's motion to consolidate its case with that of Student. OAH designated District's case as primary, with the 45-day due process timeline to be based upon District's case.

On September 30, 2016, Student filed an amended motion to begin the timeline in his case. Student asserts that OAH should begin the 45-day timeline as of September 22, 2016, the 31st day after Student filed his complaint, because District failed to set a resolution session based upon the parties' agreement that they would waive the resolution session.

On October 5, 2016, District filed an opposition to Student's motion to begin the timeline. District contends that it did not agree to waive the resolution session although the parties' representatives did hold informal settlement discussions. District contends that there is no basis for beginning the due process timeline. Although District has not formally moved to dismiss Student's case or to extend the timeline in the consolidated cases, it suggests in its opposition that based on Student's refusal to engage in a resolution session, OAH should postpone beginning the due process timeline until Parents participate in a formal resolution session.

Student filed a reply to District's opposition on October 6, 2016. Two hours later, District filed a sur-reply to Student's motion.

APPLICABLE LAW AND DISCUSSION

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 specifically agree to use mediation in lieu of a resolution session. (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 Local Education Agency 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).)

DISCUSSION

It is perplexing why Student felt it necessary to file a motion to begin a timeline when the dates originally scheduled for his case were obviously set within the timeline he requested in his motion. The timeline in Student's case began, by operation of law, on September 22, 2016, 30 days after Student filed his complaint, as OAH did not receive any indication that District had failed to set a resolution session and that Student was asking that

[1] All subsequent references to the Code of Federal Regulations are to the 2006 version.

the 45-day timeline for due process be set immediately. OAH's scheduling order contemplated that the 45-day timeline would begin after the 30-day resolution period had elapsed and set hearing dates accordingly.

OAH likewise scheduled the dates for District's case according to statute, setting the dates within the 45-day timeline applicable to district-filed complaints. OAH has deemed District's case here to be the primary case, and the 45-day timeline for District's case is now the timeline for the consolidated cases. That timeline began to run the day District filed its case. The hearing in the consolidated cases is scheduled for just a week after the original date set in Student's case.

For these reasons, Student's motion to begin the timeline is moot, and is denied on that basis.

To the extent that District is moving to extend the timeline in this case, that implied motion is denied. The wording of the correspondence from Student's attorney to District's attorney specifically stated that Student was proposing to waive the resolution session in favor of informal settlement discussions between the parties. The written response from District's attorney appears, on its face, to accept Student's proposal. The parties, through their representatives, then met to discuss settlement. The discussions did not result in a settlement agreement. Student has declined to engage in mediation, which is his right. The parties did not specifically invoke or agree to go straight to mediation in lieu of resolution pursuant to the provisions of 34 Code of Federal Regulations part 300.510(a)(3)(ii).

District asserts that the settlement discussions between the parties did not constitute a resolution session because neither Student's parents nor any District staff participated in the discussions. District asserts that it has the right to require that Parents participate in a resolution session before the timeline for due process begins.

The flaw in District's argument is that it is District's responsibility to contact Parents (or their representative if they have one) within 15 days of the filing of a student complaint, and to hold a resolution session within 30 days of the date of filing. Here, if the parties did not waive resolution, it was District's obligation to schedule the meeting. District did not do that. Rather, it agreed to engage in the informal discussions proposed by Student. District cites to no authority for its proposition that the parties can agree to postpone a resolution date, after which a district can then demand a late resolution session and require the postponement of a due process hearing in order to hold the delayed resolution session. If District here did not believe that it was agreeing to waive the resolution session, it was required to contact Parents within 15 days of the filing of Student's complaint and set a resolution date, irrespective of the parties' informal discussions.

Here, either the parties agreed to waive resolution (which is supported by the correspondence between the parties' attorneys) or District failed to set a resolution date within 15 days of the filing of Student's complaint. In either case, the result is that the 45-day timeline for due process began to run on the 31st day following the filing of Student's

complaint. That date was subsequently modified by OAH's granting of District's motion to consolidate and the designation of District's case as primary.

ORDER

1. Student's motion to begin the due process timeline is denied as moot.

2. District's implied motion to extend the timeline for due process is denied.

3. The hearing in this consolidated matter shall proceed as scheduled.

DATE: October 7, 2016

/s/
DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings