BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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| In the Matter of: | |
| PARENT ON BEHALF OF STUDENT, | OAH Case No. 2017110082 |
| v. | ORDER DENYING DISTRICT'S SECOND MOTION TO DISMISS COMPLAINT FOR FAILURE TO PARTICIPATE IN A RESOLUTION SESSION |
| ESCONDIDO UNION SCHOOL DISTRICT. | |

## PROCEDURAL BACKGROUND

On October 30, 2017, Student filed a due process hearing request (complaint) naming Escondido Union School District. District received a copy of the complaint on October 31, 2017. On November 13, 2017, District filed a motion to dismiss the complaint based on its contention that Student had refused to agree to participate in the early resolution conference required by the Individuals with Disabilities Education Act and the Code of Federal Regulations. District stated that it had scheduled a meeting for November 27, 2017, but that Student had stated that she would not attend because the meeting was not scheduled within 15 days of when she filed her complaint as required by law.

Student filed an opposition to the motion on November 15, 2017. Student stated that she was ready, willing, and able to participate in a resolution session at any time during the 15 days following her filing of her complaint, but that District had failed to set a timely resolution meeting. Student opposed District's motion to dismiss on the grounds that District had failed to set a timely resolution meeting. Therefore, Student asked that District's motion be denied and that she be excused from having to participate in a resolution session. Student asked that the matter proceed to mediation and hearing.[1]

OAH issued an Order on November 20, 2017, denying without prejudice District's motion to dismiss Student's complaint. OAH determined that District's motion to dismiss was not yet ripe because Student had never stated she was not available on the date District had chosen for the resolution session, and because the date of that meeting had not yet

[1] Embedded in Student's opposition to District's motion to dismiss was a motion by Student to begin the due process hearing timeline based on District's failure to convene a resolution session within 15 days of receiving Student's complaint. OAH did not rule on the motion as it was not filed separately from Student's opposition.

occurred. OAH's order gave District authority to refile its motion to dismiss if Student did not attend the November 27, 2017 resolution session. OAH did not address the substantive merits of District's motion.

On November 21, 2017, a day after OAH issued its order denying District's motion, District sent an email to Student asking her to confirm by the following day if she and her attorney would be attending the November 27, 2017 resolution meeting. District stated that if it did not hear from Student by the afternoon of November 22, 2017, which was the day before District went on its Thanksgiving holiday break, District would cancel the November 27 meeting. Student emailed District on November 22, stating that OAH had yet to rule on her motion to begin the hearing timeline. Student stated if OAH denied her motion, she intended to work with District to comply with the directive to attend the resolution. Student stated she and her attorney were not available on the morning of Monday, November 27, 2017, but could be available either in the afternoon on November 27 or anytime the following day. She requested the availability of District and its attorney.

District replied to Student's November 22, 2017 email the same day stating that it had cancelled the November 27, 2017 resolution meeting due to Student's unavailability. District indicated that it was not available the afternoon of November 27 or any other day that week due to other commitments of its attorney and other members of her law firm. District then filed its second motion to dismiss on November 29, 2017, without attempting to find mutually agreeable dates to hold the resolution meeting. In its second motion to dismiss Student's complaint, District again moves for dismissal based on Student's failure to attend the November 27, 2017 resolution meeting. Student filed an opposition to District's motion on November 30, 2017.[2]

## APPLICABLE LAW

A local educational agency is required to convene a meeting with the parents and the relevant member(s) of the IEP team who have specific knowledge of the facts identified in the due process complaint 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 parent and the local education agency determine the relevant members of the IEP team to attend the meeting. (34 C.F.R. § 300.510(a)(4). The resolution session need not be 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).) Except where the parties have jointly agreed to waive the resolution process or use mediation, the failure of the parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held. (34 C.F.R. § 300.510(b)(3).) If the Local Education Agency is unable to obtain the

[2] In her opposition to District's second motion to dismiss, Student again embedded a motion to begin the hearing timelines in this case. Student subsequently filed a separate motion to begin the timeline. Student's motion will be addressed in a separate order.

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

District's position is that "OAH does give the parties a 30-day window to convene" a resolution session. Therefore, since it contends that Student refused to meet on November 27, 2017, Student's complaint should be dismissed. District's position is misplaced for several reasons.

First, District has interpreted OAH's November 20, 2017 order denying its first motion to dismiss without prejudice as an order that Student was required to meet with District on November 27, 2017. District is incorrect. The order merely found that District's motion was not ripe. OAH did not rule on the merits of District's motion and did not specifically order Student to meet with District on November 27.

The main deficiency in District's motion, however, is the lack of any support for its proposition that it has 30 days to convene an initial resolution session. As Student outlines in her opposition, title 20 United States Code section 1415(f)(1)(B), as further explained in title 34 Code of Federal Regulations part 300.510(a)(1), and in Education Code 56501.5, subdivision (a)(1), a school district must convene a resolution session within 15 days of receiving notice of a due process complaint. District's reliance on a 30-day timeline for its attempting to convene the resolution session conflates its duty to convene the meeting within 15 days with the 30 days federal and state law give a district to convince a parent to attend a resolution session if the district has not been able to obtain the parent's attendance during the 15-day initial timeframe for convening the meeting.

Districts are charged with making their best efforts to obtain a parent's participation during the 15-day timeframe for convening the meeting. However, if after 30 days a district has not been able to obtain a parent's participation in the meeting, the district may file a motion to dismiss the student's complaint. (34 C.F.R. § 300.510(b)(4); Ed.Code, 56501.5, subd. (e)(1).) It is only after it has made significant attempts to obtain the parent's participation, that the district may move to dismiss the student's complaint. In essence, the Individuals with Disabilities Education Act, its supporting regulations, and state education law, give parents an additional 15 days to make up their minds about attending a resolution session before a district may move to dismiss the student's complaint. The additional 15 days is for the benefit of the student and his or her parents, not for the district. Therefore, District was required to attempt to convene a resolution session within 15 days of receiving Student's complaint. If Student's parent did not agree to attend the meeting at any time within the first 15 days, District had another 15 to try to find a mutually agreeable date to hold the meeting.

These points were emphasized in a memorandum dated July 23, 2013, from the federal Office of Special Education Programs (61 IDELR 232; 113 LRP 30291.) In the memorandum, OSEP updated frequently asked questions relative to, among other issues, the resolution process. OSEP reiterated that a school district must convene a resolution session within 15 days of receiving notice of a student's due process complaint.

District's position that it has 30 days to convene a resolution session is also contradicted by the fact that both the federal regulations and the state Education Code state that if a district fails to hold the resolution meeting within 15 days of its receipt of a student's complaint, the student's parents may ask a hearing officer to immediately begin the hearing timeline. (34 C.F.R. § 300.510(b)(5); Ed. Code, § 56501.5, subd. (e)(2).) It would be contradictory for a parent to be able to request the hearing timeline be started after 15 days if a district had 30 days to convene the resolution meeting.

District therefore failed to comply with its obligation to convene a resolution meeting by no later than November 15, 2017. District has failed to cite to any authority that supports its proposition that its staff's lack of availability within the 15 days permitted it to convene the resolution session at a later date, barring parent agreement.

However, even assuming District had 30 days to convene the meeting it failed to meet its obligation to make "reasonable efforts" to secure Parent's participation. After OAH denied District's first motion to dismiss, Student requested that District change the time or date of the meeting as Parent and her attorney were not available the morning of November 27, 2017. Student suggested the parties meet either the afternoon of November 27, 2017, or anytime the following day. District's response was that neither its representative nor its attorney was available at the times Student suggested or anytime at all the week of November 27, 2017. District added that its attorney was also not available the following week.

District in this case made the question of when the resolution session would be held solely dependent on its scheduling needs. There is no statutory or case authority to support District's reliance on its lack of availability on any day other than the morning of November 27, 2017. To the contrary, federal and state law directs that a school district make "reasonable efforts" to obtain a parent's participation in the resolution session at a mutually agreed upon place and time. (34 C.F.R. § 300.510(b)(5); 34 C.F.R. § 300.322(d); Ed. Code, § 56501.5, subd. (e)(1).) District here failed to do so. In its first correspondence to Student, District set a specific date outside of the 15 days in which it was required to set the meeting. It incorrectly insisted that it was not required to set the meeting within 15 days. After its first motion to dismiss was denied and Student acceded to holding the meeting after 15 days, District failed to work collaboratively with Student to find alternative dates to hold the resolution session. It rejected dates suggested by Student. Instead of suggesting alternative dates, District simply cancelled the meeting for the date it had set and then filed its second motion dismiss, one day *before* the 30-day resolution period ended.

Since District failed to convene the resolution meeting within 15 days, and then failed to make reasonable efforts to obtain Parent's participation at a meeting thereafter, it has demonstrated no grounds to dismiss Student's complaint. Given District's failures under these facts, Student is excused from participating in resolution.

ORDER

1. District's motion to dismiss is denied.

2. This matter shall proceed to hearing on the presently scheduled dates.

DATE: December 5, 2017

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Darrell Lepkowsky
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DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings