BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. OAKLAND UNIFIED SCHOOL DISTRICT.	OAH Case No. 2015120556 ORDER DENYING MOTION TO DISMISS AND EXTENDING DUE PROCESS TIMELINES

On December 11, 2015, Student filed a due process hearing request naming Oakland Unified School District as respondent. On January 21, 2016, Oakland Unified School District filed a motion to dismiss Student's case based upon Student's alleged failure to participate in a mandatory resolution session. On January 22, 2016, Student filed an opposition to Oakland's motion to dismiss. Student also requested to advance hearing dates and requested sanctions against Oakland's counsel.

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 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

Oakland's motion, supported by sworn declarations from its attorney and Geri Baskind, its director of legal support services, indicate that Parents placed unreasonable requirements on the resolution session such as requesting approximately 22 Oakland personnel attend, and ultimately failed to attend the resolution session held on January 13, 2016. In support of its motion, Oakland submitted a string of emails exchanged between its counsel and Student's counsel generated over the course of approximately two weeks.[1]

The email exchange established that Parents have not refused to participate in a resolution session. Rather, the exchange confirms that a dispute exists among the parties and their respective counsel regarding who may attend the resolution session and which party has the right to compel or refuse to allow such participation.

This email exchange reveals that both parties have become so entrenched in their respective positions that they have acted contrary to the law. For example, Ms. Baskin's declaration states that, "…based on *my* review of the due process request, student file and discussion with relevant personnel, *I* have concluded that these requested members are not necessary for resolution of this matter." [emphasis added] The law is clear, however, that this is not a unilateral decision to be made by the district. Rather, 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) Oakland, however, is not alone in its misapplication of the law. Student asserts in an email that because Oakland did not convene the meeting within fifteen days of the complaint being filed, "…Parents are no longer required to attend this meeting…" A factual discrepancy exists regarding when Oakland received notice of the complaint and whether or not the parties had initially agreed to participate in mediation to obviate the need for a resolution session. Regardless, even if Oakland scheduled the meeting to convene after 15 days but before 30 days, the law does not relieve Student of the requirement of attending the meeting. Rather the law permits the Student to request that the due process hearing timeline commence. (34 C.F.R. § 300.510(b)(5). It was not until Student's opposition to Oakland's motion to dismiss that Student requested for the first time that hearing dates be advanced.

More importantly, however, than the parties' respective legal wrangling is that they have lost sight of the law's intended purpose for the resolution session. When the regulations to the IDEA were being crafted the issue of who decides the resolution session participants was posed as a comment. Rather than specifying a process by which to resolve such a

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[1] Student's counsel initially requested Oakland compensates her for attending the resolution session. Oakland refused and Student's counsel seemed to abandon the request. Regarding the number of Oakland employees Student requested attend the resolution session, one email clarified that Student seeks 10 Oakland employees attend the resolution session rather than 22.

dispute, the drafters stated their clear intent for the parties to resolve such disputes collectively.

> We urge LEAs and parents to act cooperatively in determining who will attend the resolution meeting, as a resolution meeting is unlikely to result in any resolution of the dispute if the parties cannot even agree on who should attend. The parties should keep in mind that the resolution process offers a valuable chance to resolve disputes before expending what can be considerable time and money in due process hearings. [71 Fed. Reg. Vol. 71, No. 156, p. 46701 (August 14, 2006)]

Student's parent is required to participate in a resolution session before a due process hearing may be commenced. Both Student and Oakland must determine who attends the resolution meeting; and are urged to do so expeditiously. Alternatively, the parties may jointly agree in writing to waive the resolution session or participate in mediation in lieu of the meeting. At this point, Oakland has not established that Parents have failed to participate in the resolution session so the motion to dismiss is denied. The fact remains, however, that the resolution session has not been conducted or waived. Therefore, the resolution session timelines will be extended for fifteen days for the session to be held or a legally acceptable alternative to be selected.

Student's request to advance the timelines in this matter and to request sanctions is denied. As noted previously, responsibility for failing to work cooperatively in this matter up to this point is attributed to both parties.

ORDER

1. Oakland's motion to dismiss is denied; however, the procedural timelines are extended.

2. All previously set dates in this matter are vacated.

3. The parties are ordered to participate in a resolution session within fifteen calendar days from the date of this order.

4. The parties are ordered to meet and confer within two business days of the date of this Order to finalize both the scheduling of the resolution session and who will attend the meeting.

5. The timelines for hearing established pursuant to title 20 United States Code section 1415(f)(1)(B) shall recommence on February 10, 2016.

6. If the parties conduct a resolution session prior to February 10, 2016, waive the resolution session in writing, or agree in writing to participate in mediation in lieu of the resolution session, the parties are ordered to notify OAH the day such action is completed. The due process timelines will then commence the day after OAH receives such notice.

7. Student's request to commence the due process timeline is denied.

8. Student's request for sanctions is denied.

IT IS SO ORDERED.

DATE: January 25, 2016

/s/

JOY REDMON
Administrative Law Judge
Office of Administrative Hearings