BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2015010860
v.	ORDER DENYING MOTION TO DISMISS AND REQUIRING RESOLUTION SESSION
GROSSMONT UNION HIGH SCHOOL DISTRICT.	

On January 22, 2015, Student filed a request for a due process hearing with the Office of Administrative Hearings against Grossmont Union High School District. On February 3, 2015, Student filed a motion to amend her due process complaint and on February 11, 2015, an Administrative Law Judge granted Student's motion to amend her complaint and reset all applicable timelines effective that day.

On March 3, 2015, Grossmont filed a motion to dismiss Student's complaint for failure to participate in a resolution session. On March 16, 2015, Student filed a response indicating that Student's mother participated in a resolution session on January 29, 2015.

APPLICABLE LAW

A local educational agency must convene a resolution meeting with the parents and the relevant members of Student's Individualized Education Program (IEP) team within 15 days of receiving notice of the Student's complaint. (20 U.S.C. §1415(f)(1)(B)(i)(I);[1] 34 C.F.R. § 300.510(a)(1) (2006).) The resolution may be waived by both parties in writing or the parties can agree to use mediation. (§ 1415(f)(1)(B)(i)(IV); 34 C.F.R. § 300.510(a)(3) (2006).) There are no provisions of law that allow a parent or an LEA to unilaterally waive the resolution meeting. (71 Fed. Reg. 47602, No. 156 (Aug. 14, 2006.)

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) (2006).) If the LEA is unable to obtain parental participation 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) (2006).)

[1] All statutory citations are to title 20 United States Code unless otherwise indicated.

DISCUSSION

Grossmont's motion acknowledges that Mother attended a meeting on January 29, 2015; however, it asserts that she did not fully participate in or complete the resolution session. Mother denies this assertion in her opposition and in support of her position that she fully participated in the resolution session submits a copy of an email from Rose Tagnesi, Grossmont's special education director. That email, dated January 29, 2015, includes Ms. Tagnesi's understanding of Mother's requests that were raised in the due process complaint and discussed during the resolution session. It is clear from the email that the parties did participate in a resolution session and discussed Student's complaint and her proposed resolutions. The following month Student filed an amended complaint and the ALJ's order granting her motion to amend specifically restarted all applicable timelines. That included the timeline during which the parties are required to participate in a resolution session or expressly waive their participation. Grossmont did not waive that participation. Despite its efforts to schedule another resolution session following the amended complaint, it appears that Mother has refused, relying on her prior participation on January 29, 2015. That meeting, however, does not relieve the parties of their obligation to participate in a second resolution session following the filing of the amended complaint.

Student's parent is required to participate in a resolution session before a due process hearing may be commenced, and OAH has discretion to dismiss the matter if the parent refuses to participate in a resolution session and the district provides appropriate documentation supporting its motion to dismiss.

Student is represented by Mother in this case and not legal counsel. What appears to be Mother's mistaken belief that her participation in the January 29, 2015, resolution session obviated the need to participate in another session following the amended complaint is an adequate reason to deny Grossmont's motion to dismiss at this time. A resolution session shall be held within 8 business days from the date of this order.

ORDER

1. The motion to dismiss is denied without prejudice.

2. The parties are ordered to participate in a resolution session within 8 business days of the date of this order.

3. All other dates are to remain on calendar.

IT IS SO ORDERED.

DATE: March 17, 2015

/S/

JOY REDMON
Administrative Law Judge
Office of Administrative Hearings