BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2016090840
v.	ORDER DENYING MOTION TO DISMISS FOR FAILURE TO PARTICIPATE IN RESOLUTION SESSION, AND VACATING DATES AND RESETTING ALL TIMELINES
SAUGUS UNION SCHOOL DISTRICT.	

On September 16, 2016, Parent filed with the Office of Administrative Hearings a due process hearing request on behalf of Student naming Saugus Union School District.

On October 17, 2016, District filed a motion to dismiss due to Parent's failure to participate in a mandatory resolution session. District claimed that by letter dated September 20, 2016, District proposed to schedule the resolution session on September 29, 2016. District requested Parent fill out a response form indicating whether Parent would agree to attend the resolution session on September 29, 2016 or required an alternative date, and in that event, to propose new dates, but that District may not be available on the preferred date. On September 23, 2016, Parent sent an email to District indicating that Parent was refusing District's letter and instructed the post office to return it to sender. Parent stated District was not allowed to send letters to Parent's home. On September 27, 2016, District claims it emailed the resolution session invitation to Parent. The same day, Parent sent an email to District requesting that District provide new dates for the resolution session. On September 27, 2016, District sent an email inquiring whether Parent would agree to attend the resolution session on September 29, 2016, and if not, to propose new dates. District claims Parent did not attend the resolution session on September 29, 2016 and did not provide alternative dates.

October 20, 2016, Parent filed a response to the motion to dismiss. Parent did not explain why she could not participate in the September 29, 2016 resolution session or offer alternative dates to District. Parent claimed she was now waiting to hear from the District secretary regarding the scheduling of the resolution session and that the scheduling of the resolution session was "pending."

On October 26, 2016, District filed a motion to continue the prehearing conference and due process hearing dates to new dates as determined by the ALJ. District has received communication from Parent that she is willing to participate in a resolution session which is now scheduled for November 2, 2016, two days after the October 31, 2016 prehearing conference date. District's counsel is not available on scheduled due process hearing date of

November 10, 2016. District has no way to contact Parent to request a continuance because Parent refuses all mail delivery from District, and District is unable to email Parent.

APPLICABLE LAW

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).) 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 to 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

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 District provides appropriate documentation supporting its motion to dismiss.

District has failed to establish that it made reasonable efforts to obtain Parent's participation in the resolution session. District's motion to dismiss is not supported by a sworn declaration. On September 27, 2016, Parent asked for new dates for the resolution session and District failed to provide Parent with new dates. Also, while District claims Parent never offered alternative dates for the resolution session, in Parent's response to the motion to dismiss, Parent contends that she was now waiting for response from the District secretary regarding the scheduling of the resolution session.

Although Parent did not explain why she did not participate in the September 29, 2016 resolution session or initially offer alternative dates to District, the papers filed by the parties indicate Parent is willing to attend a resolution session. District's motion to continue is treated as a motion to extend the timelines. Because the mandatory resolution session did not occur within the initial resolution period, and to give Parent an opportunity to participate in a resolution session, all timelines shall be reset as of the date of this order. If after 30 days, Parent has not participated in a resolution session, District may renew its motion to dismiss the case.

Accordingly, District's motion to dismiss is denied, but the timelines shall be reset and extended pursuant to District's request to continue.

ORDER

1. District's motion to dismiss is denied.

2. All currently scheduled dates are vacated. The timelines for hearing established pursuant to Title 20 United States Code section 1415(f)(1)(B) shall recommence and all applicable timelines shall be reset as of the date of this Order. OAH will issue a scheduling order with the new dates.

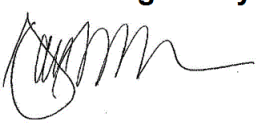
3. Parent shall participate in a resolution session within 15 days of the date of this order.

4. If a resolution session with Parent in attendance is not completed within 15 days of the date of this Order, District may re-file its motion to dismiss for failure to participate in a resolution session.

IT IS SO ORDERED.

DATE: October 27, 2016

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LAURIE GORSLINE
Administrative Law Judge
Office of Administrative Hearings