BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2015030220
v.	ORDER FOLLOWING PREHEARING CONFERENCE AND CONTINUING PREHEARING CONFERENCE AND DUE PROCESS HEARING DUE TO FAILURE TO ATTEND OR WAIVE RESOLUTION SESSION
FRESNO UNIFIED SCHOOL DISTRICT.	

On April 20, 2015, a telephonic prehearing conference was held before Administrative Law Judge Rebecca Freie, Office of Administrative Hearings.[1] Parent appeared on behalf of Student. Diandra Netto, Attorney at Law, appeared on behalf of Fresno Unified School District. She was accompanied by Attorney at Law Sydney Smith. The PHC was recorded.

On March 18, 2015, Fresno filed with OAH a notice entitled "Notice of Resolution Session Outcome." This notice contained the information that Fresno had attempted to convene a timely resolution session with Parent, but Parent refused to attend. The parties did not execute a written waiver, nor did they agree to use mediation in place of the resolution session.

APPLICABLE LAW

A local educational agency (LEA) 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).) 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).) 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 LEA 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).)

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted for good cause. (34 C.F.R. §

[1] ALJ Paul Kraus observed the PHC.

300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances are disfavored. Good cause may include the unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances; substitution of an attorney when the substitution is required in the interests of justice; a party's excused inability to obtain essential testimony or other material evidence despite diligent efforts; or another significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. (See Cal. Rules of Court, rule 3.1332(c).) The 45-day period for issuance of a decision begins 30 days after the filing of a request for due process on behalf of a student. (Ed. Code § 56501.5, subd. (d).)

DISCUSSION AND ORDER

During the PHC the parties agreed that a resolution session was not held. . The parties did not execute a written waiver of the resolution session, or decide to mediate the case in lieu of the resolution session. Parties understood case would be dismissed if resolution session not held and requested an opportunity to participate in a resolution session. Therefore, the PHC and due process hearing were continued to enable the parties to engage in a resolution session and/or mediation, or to execute a written waiver of the resolution session.

Based on discussion of the parties, the ALJ issues the following order:

Prehearing Conference:	May 22, 2015, at 10:00 a.m.
Due Process Hearing:	June 10, 2015, 9:30 a.m., and continuing day to day, Monday through Thursday, as needed, at the discretion of the ALJ.

The parties indicated that they would like to mediate this case. The parties will submit a request for OAH to schedule mediation.

IT IS SO ORDERED.

DATE: April 22, 2015

/s/

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings