BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017050489
v.	ORDER (AMENDED) DENYING DISTRICT'S MOTION TO DISMISS, ORDER DIRECTING PARTIES TO ATTEND RESCHEDULED RESOLUTION SESSION, AND ORDER EXTENDING PROCEDURAL TIMELINES[1]
KERN HIGH SCHOOL DISTRICT.	

May 8, 2017, Parent, on behalf of Student, filed with the Office of Administrative Hearings (OAH) a due process hearing request (complaint) against the Kern High School District. On June 20, 2017, District filed a motion to dismiss due to Parent's non-participation in a mandatory resolution session. OAH has not received a response from Student.

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 (IEP) 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).[2]) 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).)

DISCUSSION

[1] This Order is amended to correct a typographical error in the body regarding the time within which a resolution session is to occur. The substance of the Order remains unchanged.

[2] All subsequent references to the Code of Federal Regulations are to the 2006 version.

The District's motion is supported by the sworn declaration of Sandy Niday, the Director of Special Education for District, with four exhibits, which documents the District's attempts to schedule a resolution session with Mother. District receipt Student's complaint on May 9, 2017. By letter dated May 18, 2017, sent via regular mail and email, District informed Mother of its availability to participate in a resolution session at 2:00 p.m. on May 22 or May 24, 2017. District requested Parent's confirmation of her availability to attend either of the sessions. District's letter further stated that if District did not hear from Parent by May 22, 2017, District would plan to hold the resolution session on Wednesday, May 24, 2017.

District did not receive a response from Parent by May 22, 2017. Thereafter, District made several attempts to contact Parent at her mobile and home telephone numbers, leaving voice messages to confirm attendance at the May 24, 2017 resolution session. District did not receive a response. On May 24, 2017, Ms. Niday waited for Parent to attend the resolution session. Parent did not show up or otherwise contact District.

District thereafter sent Parent a letter with a confidential proposal regarding resolving the complaint on May 31, 2017. Parent responded via email, indicating she would respond "in due time." District has not received further communication from Parent. District has not at any time waived its right to a resolution session with Parent.

ANALYSIS

A 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.

The parties have not agreed to waive the resolution or proceed to mediation in lieu of the resolution session. Moreover, District properly established by declaration and documentation that it made reasonable efforts to obtain Parent's participation in a resolution session prior to filing its motion. Student has failed to respond to District's motion and has not provided OAH with an adequate reason for failing to participate in a resolution session within 30 days.

District requests dismissal of Student's complaint or, in the alternative, vacation of the prehearing conference hearing dates until Parent participates in a resolution session. As of this time, dismissal of Student's complaint is not necessary but an extension of procedural timelines is warranted. Therefore, the District's motion to dismiss is denied. Instead, the procedural timelines are reset, and a resolution session shall be held within 10 business days from the date of this order.

ORDER

1. The District's motion to dismiss is denied.

2. The parties are ordered to participate in a resolution session within 10 business days of the date of this order. The District shall schedule the resolution session within three business days of this order.

3. All previously scheduled dates are vacated. The procedural timelines are reset as of the date of this order, and OAH shall serve an amended scheduling order. Nothing in this order bars the District from filing a motion to dismiss if Mother does not attend the newly scheduled resolution session.

IT IS SO ORDERED.

DATE: June 26, 2017

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CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings