BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SOLEDAD UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017060205 ORDER FOLLOWING PREHEARING CONFERENCE, DENYING MOTION TO DISMISS, AND CONTINUING PREHEARING CONFERENCE AND HEARING

On July 7, 2017, a telephonic prehearing conference was held before Administrative Law Judge Rebecca Freie, Office of Administrative Hearings. Parent appeared on behalf of Student. Jennifer Baldassari, Attorney at Law, appeared on behalf of Soledad Unified School. The PHC was recorded.

On July 3, 2017, Soledad filed a motion to dismiss Student's complaint on the ground that Parent had not attended a resolution session. During the PHC, Parent explained that she did not do so because she did not know that her attendance was required, and she had been unsuccessful in the past in trying to resolve disputes with Soledad.

APPLICABLE LAW

A local educational agency is required to convene a resolution 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);[1] 34 C.F.R. § 300.510(a)(1) (2006); Ed. Code § 56501.5, subd (a).) The resolution session need not be held if it is waived by both parties in writing or the parties agree to use mediation. (§ 1415(f)(1)(B)(i)(IV); 34 C.F.R. § 300.510(a)(3)(2006); Ed. Code § 56501.5, subd (b).) There are no provisions of law that allow a parent or a Local Education Agency to unilaterally waive the resolution meeting. (Analysis of Comments and Changes to Regulations, Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children with Disabilities, 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); Ed. Code § 56501.5, subd. (e).) If the Local

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

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)(2006); Ed. Code § 56501.5, subd. (e)(1).)

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice (complaint) unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) If the complaint is filed by a Student, the 45-day period for issuance of a decision does not begin until 30 days after the filing of the complaint, to enable the parties to participate in a resolution session. (Ed. Code § 56501.5, subd. (d).) As a result, continuances are disfavored.

Good cause for a continuance 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).) OAH considers all relevant facts and circumstances, including the proximity of the hearing date; previous continuances or delays; the length of continuance requested; the availability of other means to address the problem giving rise to the request; prejudice to a party or witness as a result of a continuance; the impact of granting a continuance on other pending hearings; whether trial counsel is engaged in another trial; whether the parties have stipulated to a continuance; whether the interests of justice are served by the continuance; and any other relevant fact or circumstance. (See Cal. Rules of Court, rule 3.1332(d).)

DISCUSSION

A 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 school district provides appropriate documentation supporting its motion to dismiss.

Parent filed the request for due process on June 5, 2017. Multiple attempts were made by Soledad to meet Parent in a resolution session, but she refused to meet with Soledad staff.

Soledad filed its motion to dismiss two days before the end of the 30-day resolution period, which dates from the filing of Student's complaint. Although Soledad provided appropriate documentation supporting its motion to dismiss, it prematurely filed the motion. In addition, during the PHC it was clear that Parent did not understand the hearing could not be held unless she participated in the resolution session, or she and Soledad agreed in writing to waive the resolution session.

Soledad was unwilling to waive the resolution session. However, its attorney also claimed during the PHC that due to personnel changes, a meaningful resolution session could not be scheduled until August 9, or 10, 2017. Parent was unwilling to wait until then for a resolution session. The 15-day resolution period began again with the PHC, once Soledad's motion to dismiss was denied during the PHC on July 7, 2017. Accordingly, Soledad agreed to hold a resolution session within 15 days of the PHC.

Because the due process hearing cannot begin until the resolution session has been held, or waived by the parties, or they agree to mediation in place of a resolution session, it was necessary to continue the PHC and due process hearing. The PHC is continued to July 17, 2017, at 10:00 a.m. The due process hearing shall begin at 9:30 a.m. on July 25, 2017, continue on July 26 and 27, 2017, and will continue day to day, Monday through Thursday at the discretion of the ALJ.

ORDER

1. Soledad's motion to dismiss is denied.

2. The parties are ordered to participate in a resolution session within 15 days of the July 7, 2017 PHC.

3. The PHC is continued to July 17, 2017, at 10:00 a.m.

4. The due process hearing is continued to July 25, 2017, at 9:30 a.m., and will continue on July 26, and 27, 2017. It will continue day to day, Monday through Thursday at the discretion of the ALJ if it is not completed on July 27, 2017.

5. The 45 day period for issuance of a decision shall begin on July 23, 2017.

IT IS SO ORDERED.

DATE: July 10, 2017

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Rebecca Freie
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REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings