BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. KERNVILLE UNION SCHOOL DISTRICT.	OAH Case No. 2018020852 ORDER GRANTING DISTRICT'S MOTION TO EXTEND PROCEDURAL TIMELINES

On February 19, 2018, Parent on behalf of Student filed with the Office of Administrative Hearings a request for due process hearing (complaint), naming Kernville Union School District.

On March 27, 2018, District filed a motion to extend procedural timelines due to the failure of Student's parent to participate in a mandatory resolution session. OAH has received no response from Student to District's motion.

APPLICABLE LAW

Within 15 days of receiving notice of a student's complaint, a local educational agency is required to convene a meeting with the student's parent and the relevant members of the individualized education program team. (20 U.S.C. § 1415(f)(1)(B)(i)(I); 34 C.F.R. § 300.510(a)(1) (2006);[1] Ed. Code, § 56501.5, subd. (a)(1).) The local educational agency Federal and state law require school districts to make "reasonable efforts" to obtain a parent's participation in the resolution session at a mutually agreed-upon place and time. (34 C.F.R. § 300.510(b)(5); 34 C.F.R. § 300.322(d); Ed. Code, § 56501.5, subd. (e)(1).) The resolution session need not be held if it is waived by both parties in writing or the parties agree to use mediation instead of the resolution session. (34 C.F.R. § 300.510(a)(3).) If the student's parent does 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 local educational agency is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made and documented, the local educational agency 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).)

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

DISCUSSION

District's motion is supported by the sworn declaration of Kyle W. Holmes, attorney for District, as well as copies of correspondence between District and its attorney and Student's parent and Student's attorney. These supporting documents demonstrate that District, through its attorney, wrote to Student's attorney on February 26, 2018, suggesting three days on which to hold the required resolution session, with numerous timeslots for the session available on all three days. District also stated that it was willing to hold the resolution session telephonically if Student preferred. District also wrote directly to Student's parent on February 27, 2018, suggesting the same three dates.

On March 1, 2018, Student, through counsel, responded asking that District waive the resolution session. Student's attorney also indicated that he was not available until March 7, 2018, a day after the 15-day timeline to hold the resolution session would run. On March 5, 2018, District responded to Student's attorney that it did not want to waive the resolution session, but would agree to waive the 15-day timeline. District asked Student to provide availability for the meeting either that week or the following week. Also on March 5, 2018, District wrote to Student's parent stating that District had not heard back from her regarding the suggested dates for the resolution meeting. District stated that since March 6, 2018, was the last day for it to hold the meeting, it was scheduling the meeting for March 6, 2018, at 10:00 a.m. unless District heard back from either Student's parent or her attorney.

Neither Student's parent nor her attorney responded to District's correspondence. Neither Student's parent nor her attorney appeared on March 6, 2018, to attend the resolution session.

On March 7, 2018, District's attorney wrote to Student's attorney pointing out that the 15-day timeline for District to hold the resolution session had run the previous date. District again requested that Student's attorney suggest dates for the resolution session, even if it was outside of the statutory timelines. District's attorney wrote again to Student's attorney on March 13, 2018, asking that he advise when he and Student's parent would be available for a telephonic resolution session between the date of the letter and March 21, 2018. District wrote to Student's parent on March 14, 2018, again reiterating its desire to hold a resolution session, and again asking Parent to contact District to set up a date for a meeting.

District did not receive any response from either Student's parent or her attorney regarding the resolution session. Rather, on March 21, 2018, Student's attorney wrote to District's attorney asking whether he would like to schedule a mediation date in the matter.

District filed its motion after the end of the 30-day resolution period, which dates from the filing of Student's 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.

Here, District has not yet requested that OAH dismiss Student's complaint. Rather, it has requested that the timelines in this case be extended and that Student's parent be ordered to participate in a resolution session. District has provided ample support indicating that it has not agreed to waive the resolution session or proceed to mediation in lieu of the resolution session in this case. Moreover, District has established that it made reasonable efforts to obtain the participation of Student's parent in a resolution session prior to filing its motion to extend the due process hearing timeline. Student has failed respond to District's motion to extend the timeline and thus has not provided OAH with any reason for failing to participate in a resolution session within 30 days. Therefore, District's motion to extend procedural timelines is granted. A resolution session shall be held within 15 days from the date of this order.

ORDER

1. District's motion to motion to extend procedural timelines is granted.

2. All previously scheduled dates in this matter are vacated.

3. The parties are ordered to participate in a resolution session within 15 days from the date of this order.

4. The timelines for hearing established pursuant to title 20 United States Code section 1415(f)(1)(B) shall recommence on April 3, 2018.

5. OAH shall issue a new scheduling order with new prehearing conference and due process hearing dates.

DATE: April 3, 2018

DocuSigned by:
Darrell Lepkowsky
A228F8201132499

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings