BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

CULVER CITY UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024050570

ORDER DENYING MOTION TO DISMISS, ORDERING EARLY RESOLUTION SESSION, AND GRANTING MOTION TO CONTINUE

JUNE 17, 2024

On May 10, 2024, Parent on behalf of Student filed a due process hearing request with the Office of Administrative Hearings, naming Culver City Unified School District. The Office of Administrative hearings is called OAH. Culver City Unified School District is called Culver City.

On June 12, 2024, Culver City filed a motion to dismiss Student's complaint or in the alternative to continue the due process hearing. On June 14, 2024, Student filed an opposition to both motions.

A local educational agency is required to meet with the parents and Student's relevant individualized education program team members within 15 days of receiving Student's complaint. (20 U.S.C. § 1415(f)(1)(B)(i)(I); 34 C.F.R. § 300.510(a)(1) (2006). The meeting called a resolution session, can be waived in writing by both parties or if they agree to use mediation. (34 C.F.R. § 300.510(a)(3).) If the parents do not attend the resolution session, and it was not waived, there is no due process hearing until the resolution session waived or held. (34 C.F.R. § 300.510(b)(3).) The respondent can request the case be dismissed after the 30-day period, if it documented reasonable efforts to hold the resolution session and the parents did not attend. (34 C.F.R. § 300.510(b)(4).)

Culver City's motion to dismiss or continue, supported by the sworn declarations of Culver City's director of special education Diana Fannon, and Culver City's attorney Madisyn Aleshire, established that on May 14, 2024, the parties agreed to hold an early resolution session by videoconference on May 29, 2024. Fannon, Parent, and an advocate appeared, but Fannon was informed Parent was waiting for a second advocate from the law firm representing Student. While waiting for the second advocate, Fannon asked Parent questions regarding the facts forming the basis of Student's complaint, which Parent did not, or could not, answer except for vague responses. The first advocate did not answer Fannon's questions, and simply directed Fannon to read Student's complaint. The second advocate did not appear for the resolution session, and it ended after 15 minutes. Fannon's declaration established that there was no back-and-forth conversation, and neither Parent nor her advocate provided Fannon with information regarding what Parent was requesting to resolve the matter.

Student did not file a sworn declaration containing different or additional facts about the May 29, 2024 resolution session.

The very purpose of an early resolution session is for the parent to discuss the due process complaint and the facts forming the basis of the complaint, providing an opportunity to the local educational agency to resolve the dispute forming the basis of the complaint. (34 C.F.R. § 300.510(a)(2).)

Comments to the regulations explain that the law requires more than mere attendance at an early resolution session. (Federal Register Volume 71, No. 156, p. 46545, 46702 (Aug. 14, 2006).) Where, as here, a local educational agency convenes a resolution meeting with the parent and the parent fails to participate, the agency would need to continue making diligent efforts to obtain participation and, if unsuccessful, seek hearing officer intervention. (*Ibid.*)

Both parties must participate in a resolution session, unless waived, before a due process hearing may be commenced. Here, the parties did not agree in writing to waive the resolution or proceed to mediation in lieu of the resolution session. Parent and her advocate did not respond to any of Culver City's attempts to discuss the issues and facts forming the basis of the complaint. Culver City has made no showing of subsequent attempts to schedule another early resolution session that would warrant dismissal. However, Parent's failure to participate in the early resolution session without the written waiver of both parties bars this matter from proceeding to a due process hearing.

Student failed to meaningfully respond to questions about the complaint in the early resolution session. Student has not provided any, let alone an adequate, reason for Parent's lack of participation. The complete lack of participation by Student supports a finding in this case that the resolution session did not occur at all. Therefore, Student is ordered to participate in a resolution session in this case unless both parties agree to waive it in a writing filed with OAH.

The parties must reschedule an early resolution session and Parent must participate. Accordingly, the motion to dismiss is denied. The resolution session must be held no later than the close of business on July 2, 2024.

As to Culver City's motion to continue, Culver City contends the hearing should be continued because essential witnesses and Culver City's attorneys are not available through August 18, 2024, and because Culver City's attorneys are scheduled to appear in earlier-filed due process hearings before OAH through September 6, 2024. This matter is currently scheduled for hearing on June 25 through 27, 2024.

Student opposes on the grounds that traveling and vacationing witness may be made available by videoconference anywhere there is an internet connection, and that the attorneys' availability can be determined at the prehearing conference.

OAH must conduct a due process hearing and issue a decision within 45 days of receiving the due process complaint unless an extension is granted. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Resolving the due process hearing quickly is legally required. Hearings may only be continued if good cause is established. (Ed. Code, § 56505, subd. (f)(3).) OAH is guided by the Administrative Procedure Act and the California Rules of Court when ruling on continuance motions. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, rule 3.1332.)

Good cause to continue a hearing may include:

- An essential lay or expert witness is unavailable because of death, illness, or other excusable circumstances;
- A party is unavailable because of death, illness, or other excusable circumstances;

- A party's attorney is unavailable because of death, illness, or other excusable circumstances;
- A new attorney substitutes in, but only if the party establishes that the substitution is required in the interests of justice;
- A new party is added, and the new party has not had a reasonable opportunity to prepare for trial, or other parties have not had a reasonable opportunity to prepare for trial regarding the new party's involvement;
- A party is unable to obtain essential testimony, documents, or other material evidence despite diligent efforts; or
- The case has a significant and unexpected change which makes the case not ready for trial.

Generally, continuances are disfavored. (Cal. Rules of Court, rule 3.1332(c).)

Culver City established good cause to continue the due process hearing due to the unavailability of essential witnesses through August 18, 2024. Witnesses who are traveling or vacationing may or may not have access to the internet at various times, may be in different time zones, and may have schedules that do not permit availability or confidential testimony at the time they are called to testify. However, as to the attorneys' potential calendar conflicts after August 18, 2024, the hearings in the earlier-filed cases may settle, be continued, or otherwise go off-calendar, or other counsel may become available, in the ensuing months. Accordingly, the hearing in this matter will be scheduled to take place when all key witness are available after August 18, 2024.

The request to continue is granted. All previously scheduled dates are vacated. The new dates are:

PREHEARING CONFERENCE will be held on August 9, 2024, at 10:00 AM.

DUE PROCESS HEARING will be held on August 20, through 22, 2024.

The mediation, prehearing conference, and due process hearing will be held by videoconference or telephone, unless otherwise ordered. The due process hearing will begin at 9:30 AM on all days, and generally end at 3:30 PM, unless otherwise ordered. The hearing will continue day to day at the discretion of the Administrative Law Judge. Prehearing conference statements and motions are due to OAH no later than three business days before the prehearing conference. Late motions will only be considered if good cause is established for the late filing.

The parties must immediately give potential witnesses the hearing dates, and must subpoena witnesses, if necessary, so they are available to testify. Failing to properly notify or subpoena a witness is not good cause to delay the hearing.

The resolution session must be held no later than the close of business on July 2, 2024.

IT IS SO ORDERED

Alexa Hohensee

Alexa Hohensee
Administrative Law Judge
Office of Administrative Hearings