BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SAN DIEGO UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018031163 ORDER DENYING STUDENT'S MOTION TO BEGIN DUE PROCESS HEARING TIMELINE

On March 26, 2018, Student filed a Request for Due Process Hearing with the Office of Administrative Hearings, naming San Diego Unified School District. On April 10, 2018, Student filed a Motion to Begin the Due Process Hearing Timeline on the grounds that District failed to convene a resolution session within 15 days of receiving notice of Student's complaint. Student's motion seeks an order from OAH relieving Student of the obligation to participate in a resolution session. District did not file an opposition to Student's motion.

APPLICABLE LAW

Before a due process hearing may occur, a local educational agency must convene a meeting with the parents and relevant members of the individualized education program team. (20 U.S.C. § 1415(f)(1)(B)(i); 34 C.F.R. § 300.510(a)(1); Ed. Code, § 56501.5, subd. (a).) This meeting is commonly referred to as a resolution session and must be held within 15 days of the local educational agency receiving notice of the due process complaint. (20 U.S.C. § 1415(f)(1)(B)(i)(I); 34 C.F.R. § 300.510(a)(1); Ed. Code, § 56501.5, subd. (a)(1).) The purpose of the meeting is for parents to discuss the facts that form the basis of the due process complaint so that the local educational agency has the opportunity to resolve the dispute. (20 U.S.C. § 1415(f)(1)(B)(i)(IV); 34 C.F.R. § 300.510(a)(2); Ed. Code, § 56501.5, subd. (a)(4).) Parents and the local educational agency may agree in writing to waive the resolution session or may agree to use the mediation process instead. (20 U.S.C. § 1415(f)(1)(B)(i)(IV); 34 C.F.R. § 300.510(a)(3); Ed. Code, § 56501.5, subd. (b).)

A due process hearing must be conducted and a decision rendered within 45 days after the expiration of the 30-day resolution period unless the timeline is adjusted or an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) If the local educational agency fails to hold a resolution session within 15 days of receiving notice of the complaint or fails to participate in the resolution session, the parent may seek intervention of a hearing officer to begin the due process hearing timeline. (34 C.F.R. § 300.510(b)(5); Ed. Code, § 56501.5, subd. (e)(2).) If the local educational agency has not resolved the complaint to the parents' satisfaction within

30 days of receiving notice of the complaint, the due process hearing timelines begin. (20 U.S.C. § 1415(f)(1)(B)(ii); 34 C.F.R. § 300.510(b); Ed. Code, § 56501.5, subd. (c).)

DISCUSSION

Student's complaint was filed on March 26, 2018, and the attached proof of service indicates District received the complaint by fax on that same date. District was required to convene a resolution session by April 10, 2018. However, the 30-day resolution period does not expire until April 25, 2018. According to the declaration of Student's attorney, District responded to the complaint on April 6, 2018. District's response requested a waiver of the 15-day timeline to hold a resolution session and proposed the parties meet on April 16, 2018. The declaration does not indicate Student's parents were unavailable to participate in a resolution session on April 16, 2018, or that District was unwilling to arrange a mutually agreeable date for the resolution session.

District attempted to convene a resolution session in this matter within the 30-day resolution period. Student's refusal to participate in a resolution session solely because the proposed date occurred after the 15-day timeline does not constitute grounds to advance the due process hearing timelines. Student failed to establish District was unwilling or unavailable to participate in a resolution session.

Accordingly, Student's Motion to Begin the Due Process Hearing Timeline is denied. All dates remain as scheduled.

IT IS SO ORDERED.

DATE: April 24, 2018

DocuSigned by:
Tara Doss
0D223C0D8032412...

TARA DOSS
Administrative Law Judge
Office of Administrative Hearings