BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT

v.

JULIAN UNION ELEMENTARY SCHOOL DISTRICT.

OAH CASE NUMBER 2023090616

ORDER DENYING MOTION TO DISMISS, DIRECTING PARTIES TO ATTEND RESOLUTION SESSION, AND CONTINUING PREHEARING CONFERENCE AND DUE PROCESS HEARING

NOVEMBER 02, 2023

On September 21, 2023, Parents on behalf of Student filed a Request for Due Process Hearing, called the Complaint, with the Office of Administrative Hearings, naming Julian Union Elementary School District. Parents on behalf of Student are represented by attorney Meagan M. Nunez. The Office of Administrative Hearings is called OAH. Julian Union Elementary School District is called Julian Union.

On September 22, 2023, OAH issued a scheduling order, setting the prehearing conference for November 3, 2023, and the due process hearing for November 14, 15, and 16, 2023. On September 27, 2023, Julian Union filed notice of representation, by Deborah R. G. Cesario and the law firm of Hatch & Cesario. On October 2, 2023, Julian Union filed its response to the Complaint.

On October 25, 2023, Julian Union filed a motion to dismiss the complaint because of Student's failure to participate in a mandatory resolution session. On October 26, 2023, Student filed opposition to the motion to dismiss.

APPLICABLE LAW

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).)

DISCUSSION

Julian Union's motion to dismiss is supported by exhibits and the declarations of its attorney Cesario, the paralegal for Hatch & Cesario, and the director of due process hearings and mediation for San Diego Unified School District. The motion includes exhibits, documenting communication by the paralegal and attorney Cesario with the

offices of Student's attorney, Nunez. The moving papers document extensive communicative efforts by attorney Cesario's law firm, with Meagan Nunez's firm, in an attempt to timely schedule the early resolution session. Julian Union offered many dates for the resolution, which were declined by Student, for various reasons. Julian Union regularly reminded the Nunez firm of the mandatory 15-day due date for scheduling the resolution session and of the 30-day period, after which Julian Union could request dismissal for Parents' failure to attend. Julian Union's counsel specifically informed the Nunez law firm that Julian Union would not waive the resolution session.

Attorney Nunez agreed to a resolution session at 1:00 PM, October 23, 2023, which was the 30th day after Julian Union received Student's Complaint. On October 19, 2023, Julian Union's attorneys provided the Nunez firm with the Zoom meeting link for the October 23, 2023 resolution session. On Sunday, October 22, 2023, attorney Nunez cancelled the October 23, 2023 resolution session, citing sickness she acquired over the weekend. However, Ms. Nunez did not cancel and did attend a resolution session at 2:00 PM, and a prehearing conference at 3:00 PM, on October 23, 2023, with another school district.

Parent is required to participate in a resolution session before a due process hearing may be commenced. There was no written agreement to waive the resolution or proceed to mediation in lieu of the resolution session. Julian Union established that it made reasonable efforts to obtain parental participation with Student's attorney before filing its motion to dismiss.

Yet, Student's counsel indicated she had taken ill, but improved enough not to cancel her other two appearances, which were later in the day on October 23, 2023. Therefore, the motion to dismiss is denied. The timeline to complete the resolution is extended. The parties are ordered to participate in a resolution session no later than

November 17, 2023. The matter is continued so the parties can participate in the resolution session.

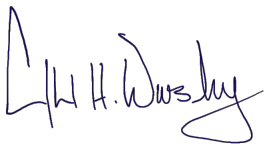
ORDER

1. Julian Union Elementary School District's motion to dismiss is denied.
2. The parties shall attend a resolution session no later than November 17, 2023.
3. All previously set dates in this matter are continued, as follows:

PREHEARING CONFERENCE will be held on December 4, 2023, at 3:00 PM.

DUE PROCESS HEARING will be held on December 12, 13, and 14, 2023.

IT IS SO ORDERED



Clifford H. Woosley

Administrative Law Judge

Office of Administrative Hearings