

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CAPISTRANO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2013101079

ORDER GRANTING MOTION TO
EXTEND PROCEDURAL TIMELINES;
RESETTING HEARING DATES

On October 29, 2013, Parent on behalf of Student (Student), through counsel, filed with the Office of Administrative Hearings (OAH) a due process hearing request (complaint) naming the Capistrano Unified School District (District).

On December 5, 2013, the District, through counsel, filed a motion to extend procedural timelines due to Student's non-participation in a mandatory resolution session. OAH has received no response from Student.

APPLICABLE LAW

A local educational agency (LEA) is required to convene a meeting with the parents and the relevant members of the Individualized Education Program (IEP) team within 15 days of receiving notice of the Student's complaint. (20 U.S.C. § 1415(f)(1)(B)(i)(I); 34 C.F.R. § 300.510(a)(1).) The resolution session need not be held if it is waived by both parties in writing or the parties agree to use mediation. (34 C.F.R. § 300.510(a)(3).) 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).) If the LEA 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).)

DISCUSSION

The District's motion indicates that Student did not attend the resolution session scheduled for November 12, 2013. The District provided Student adequate notice of this meeting and did not receive a response from Student until November 14, 2013, two days following the proposed meeting.

The District scheduled a second resolution session for December 4, 2013, a date requested by Student's counsel. On December 2, 2013, without explanation, Student's counsel canceled the December 4, 2013, resolution session and requested that this meeting be held on December 11, 2013.

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, or to extend the procedural timelines, if the parent refuses to participate in a resolution session and the district provides appropriate documentation supporting its motion to dismiss.

Here, there has been no agreement to waive the resolution or proceed to mediation in lieu of the resolution session in this case. Moreover, the District has established that it made reasonable efforts to obtain Student's parent's participation in a resolution session prior to filing its motion to extend procedural timelines, and it documented those reasonable efforts in its motion. Student has failed to respond to the District's motion and Student has not provided OAH with an adequate reason for failing to participate in a resolution session within 30 days. Therefore, the District's motion to extend procedural timelines for Student's complaint is granted.

ORDER

1. The District's motion to extend procedural timelines is granted.
2. All previously set dates in this matter are vacated.
3. The parties are ordered to participate in a resolution session within 15 business 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 as of the date of this Order.
5. OAH will issue a Scheduling Order resetting the hearing dates for this matter.

IT IS SO ORDERED.

Dated: December 12, 2013

/s/

PAUL H. KAMOROFF
Administrative Law Judge
Office of Administrative Hearings