

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PANAMA-BUENA VISTA UNION
SCHOOL DISTRICT.

OAH CASE NO. 2014040519

ORDER DENYING MOTION TO
DISMISS AND RESETTING
TIMELINES; ORDER DENYING
STUDENT'S REQUEST TO START
HEARING TIMELINE

On April 8, 2014, Student filed with the Office of Administrative Hearings (OAH) a due process hearing request (complaint) naming Panama Buena Vista Union School District (District) as the respondent. On April 10, 2014, District filed a notice of insufficiency which the Office of Administrative Hearings denied on April 22, 2014. On May 7, 2014, District filed a motion to dismiss on the ground that Student failed to participate in a resolution session. Student filed an opposition, including a request to begin hearing timelines on May 8, 2014. District's motion and Student's opposition are supported by declarations under penalty of perjury. District filed a reply in support of its motion on May 9, 2014. For the reasons discussed below, District's motion to dismiss is denied, Student's request to start hearing timelines is denied, and the timelines are reset based on Student's failure to attend a resolution session.

APPLICABLE LAW

A local educational agency 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) (2006) .) 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) (2006) .) 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) (2006).) If the agency is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made and documented, the 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) (2006) .) If the agency fails to hold the resolution meeting within 15 days of receiving notice of the due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline. (34 C.F.R. § 300.510(b)(5) (2006).)

DISCUSSION

District contends that on April 22, 2014, District invited Student's parent to an early resolution session scheduled for either April 22, 2014 or April 23, 2014 by way of an emailed letter. District claims Parent did not attend the meeting on April 22, 2014, and as a result District's representative attempted to contact Parent. Student's attorney responded in writing to District on April 23, 2014, claiming that neither the parent nor Student's advocate or attorney were available on the two dates proposed by District. Student's counsel also stated that, in her opinion, District failed to comply with Title 20 United States Code section 1415(f)(1)(B) by failing to hold a resolution session within 15 days of receiving notice of Student's complaint. Finally, Student's counsel stated that Student intended to move forward with the due process proceedings, without offering any alternative dates for a resolution session.

District responded in writing to Student's attorney proposing alternate dates. Student's attorney responded that District had waived its right to a resolution session for failing to hold it within fifteen days of receipt of the complaint, and therefore Student had no obligation to attend a resolution session. District's counsel responded to Student's counsel objecting to any waiver, and again proposed new dates. Student's attorney did not respond. District then filed this motion.

Student argues that District's motion was untimely because it was filed before the 30-day resolution session ended. However, the motion was filed on the 30th day, and the one day difference is not significant or a basis for denying the motion.

District's first invitation to an early resolution session, sent on April 22, 2014, did not give Student's parents reasonable notice of a resolution session on April 22 or April 23, 2014. However, after April 22, 2014, District credibly established that it made and documented further attempts to communicate with both Parent and Student's attorney to schedule a resolution session before the end of the 30-day period, including in conjunction with an individualized education program meeting, to no avail.

Student's counsel, on the other hand, has given no credible explanation why Parent could not have participated in an early resolution session between April 22, 2014, and the date on which this motion was filed. Instead, Student's counsel based Parent's refusal to participate in a resolution session on counsel's erroneous conclusion that District waived its right to resolution session by failing to hold the resolution session within 15 days. She has, however, cited to no persuasive legal authority supporting such a waiver. She waited until after District filed its motion to dismiss to seek intervention in the form of an order starting the hearing timelines.

Student's parent is required to participate in a resolution session before a due process hearing may be commenced, unless the parties mutually waive the session in writing. Parent cannot unilaterally refuse to participate and expect the matter to go to hearing. District has made reasonable efforts to hold a resolution session and has not refused to participate. 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, which is the case here.

Notwithstanding the above, Student should not be punished for his attorney's incorrect legal reasoning that the matter could proceed to hearing without participating in a resolution session. Accordingly, OAH will give Student one more opportunity to participate in a resolution session. The motion to dismiss is denied without prejudice to being re-filed should Student fail to timely participate in a resolution session. All hearing timelines shall be reset. Student's request to start the hearing timeline is denied.

ORDER

1. District's motion to dismiss is denied without prejudice to being re-filed.
2. Student's request to start the hearing timelines pursuant to Title 34 Code of Federal Regulations section 300.510(b)(5) is denied.
3. All hearing timelines in this matter are reset as of this date.
4. The parties are ordered to participate in a resolution session within 30 days of this Order. If Student's Parent fails to participate in a resolution session within 30 days District may refile its motion to dismiss the matter.
5. All dates previously set are vacated. The Office of Administrative Hearing shall issue a new scheduling order.

DATE: May 9, 2014

/s/
ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings