

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CALIPATRIA UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015100936

ORDER DENYING REQUEST TO
ADVANCE MEDIATION DATE

Student filed the original complaint with the Office of Administrative Hearings on October 23, 2015. Calipatria Unified School District filed a notice of insufficiency on November 4, 2015, which OAH granted on November 5, 2015, which vacated all mediation, prehearing conference and hearing dates, and gave Student 14 days to file an amended complaint. Student filed an amended complaint on November 13, 2015, and OAH issued a new scheduling order on November 30, 2015. On November 25, 2015, the parties filed a joint request to continue the dates in this matter with the Office of Administrative Hearings, believing that the hearing commenced on December 17, 2015, pursuant to OAH's October 28, 2015 scheduling order. OAH denied the parties' continuance request as moot on November 30, 2015, because of the new scheduling order.

On December 2, 2015, the parties filed a joint request to advance the date for mediation in this matter from December 17, 2015, to December 9, 2015, which is in the 30 day resolution session period.

APPLICABLE LAW, DISCUSSION and ORDER

A school district, or local education agency, must convene a meeting to discuss the issues raised in a due process complaint in order to attempt to resolve the dispute. (34 C.F.R. § 300.510(a)(1),(2) (2006)¹.) This meeting is commonly known as a resolution session. A resolution session need not be held if the parent and school district agree in writing to waive it (*Id.* at § 300.510(a)(3)(i)) or if the parent and school district agree to use mediation instead of a resolution session (*Id.* at § 300.510(a)(3)(ii)). If the parties agree to waive the resolution session, the 45-day timeline for a due process hearing begins the day after the waiver. (*Id.* at § 300.510(c)(1).) However, the timeline does not automatically begin if the parties agree to use mediation instead of a resolution session. (*Id.* at § 300.510(c).)

¹ Unless otherwise stated, all references are to the 2006 edition of the Code of Federal Regulations.

When the parties agree in writing to waive a resolution session, the Office of Administrative Hearings will move forward the dates for mediation, prehearing conference, and hearing to accommodate the beginning of the 45-day timeline for hearing. However, a waiver of the resolution session period and request to advance dates must be in writing and signed by all parties.

Here, OAH has not received in writing from the parties a waiver of the resolution session and a request to advance the decision timeline. While the parties may wish to waive the resolution session and advance the mediation date, they must make an affirmative request to advance the dates in the matter. It is only after receipt of such a request can OAH advance the mediation date to the date parties requested. The parties are advised that such a request would also advance the dates for the prehearing conference and due process hearing. Neither party has waived the resolution session, nor requested to advance the dates. Accordingly, the parties' request to advance the mediation date is denied.

Alternatively, the parties may be attempting to use mediation instead of a resolution session (*Id.* at § 300.510(a)(3)(ii)), which would not advance the timeline. (*Id.* at § 300.510(c).) If that is the parties' joint intent they may re-file their request to so state. Accordingly, the parties' request to advance the mediation date is denied.

IT IS SO ORDERED

DATE: December 3, 2015

/s/

PETER PAUL CASTILLO
Presiding Administrative Law Judge
Office of Administrative Hearings