BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS ON BEHALF OF STUDENT, v. TEHACHAPI UNIFIED SCHOOL DISTRICT.	OAH Case No. 2015040167 ORDER GRANTING MOTION TO EXTEND TIMELINES

On March 30, 2015, attorney Andréa Marcus filed with the Office of Administrative Hearings a due process hearing request (complaint) on behalf of Student naming Tehachapi Unified School District (Tehachapi).

On April 27, 2015, attorney Darren J. Bogié filed on behalf of Tehachapi a motion to hold proceedings in abeyance, pending Parents participation in a mandatory resolution session. This is deemed a motion to extend procedural timelines due to Parent'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 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

Tehachapi's motion is supported by sworn declarations from both its Special Education Director and its attorney, complete with copies of correspondence relating to the

issue of Parents' non-participation in a resolution session. Student's complaint was filed on March 30, 2015, and on April 7, 2015, Kathleen Siciliani, Special Education Director, sent a letter to Parents via email and United States. Postal Service, suggesting four different dates and times for holding a mandatory resolution session. Parents never responded to the correspondence.

On April 19, 2015, Ms. Marcus sent an email to Mr. Bogié. She claimed that Tehachapi had never scheduled a resolution session, and asked that the parties participate in mediation, previously scheduled by OAH for May 5, 2015, in lieu of participation in a resolution session. Mr. Bogié responded to her email on April 20, 2015, by letter, asking that alternative dates be suggested for a resolution session, and also suggesting that the attorneys find mutually agreeable dates to continue the due process hearing to, since both were unavailable on the original dates set for hearing. He received no response from Ms. Marcus. Tehachapi filed its request before the end of the 30-day resolution period, which dates from the filing of Student's complaint.

Parents are required to participate in a resolution session before a due process hearing may be commenced, and 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.

There has been no agreement to waive the resolution session, or to proceed to mediation in lieu of the resolution session in this case. Moreover, Tehachapi has established that it made reasonable efforts to obtain Parents' participation in a resolution session prior to filing its motion, and it documented those reasonable efforts in its motion. Further, Student has failed respond to Tehachapi's motion to extend timelines. Therefore, Tehachapi's motion is granted.

A resolution session shall be held within 30 calendar days from the date of this order. A new scheduling order shall be issued as of the date of this order. New timelines shall be established as if the complaint was filed on the date of this order.

ORDER

1. Tehachapi's motion to extend timelines is granted.

2. The parties are ordered to participation in a resolution session within 30 days of this order, unless there is mutual agreement to waive the resolution session.

3. All currently set dates are vacated.

4. Timelines for hearing established pursuant to Title 20 United States Code section 1415(f)(1)(B) shall recommence on June 1, 2015.

IT IS SO ORDERED.

DATE: May 1, 2015

/s/

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings