BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LA MESA-SPRING VALLEY SCHOOL DISTRICT.	OAH Case No. 2018050197 ORDER DENYING MOTION TO DISMISS OR, IN THE ALTERNATIVE, TO CONTINUE; ORDER DIRECTING PARTIES TO PARTICIPATE IN A RESOLUTION SESSION; ORDER RESETTING PROCEDURAL TIMELINES

PROCEDURAL BACKGROUND

On May 3, 2018, Parent on behalf of Student filed a request for due process hearing (complaint) with the Office of Administrative Hearings naming La Mesa-Spring Valley School District. On June 13, 2018, District filed a motion to dismiss Student's complaint based on Student's alleged failure to participate in a mandatory resolution session. In the alternative, District moved to continue the due process hearing and set a mediation date in the case. Student filed a response to District's motion on June 14, 2018. In his response, Student opposes District's motion to dismiss and District's motion to continue.

APPLICABLE LAW

A local educational agency is required to convene a resolution 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);[1] 34 C.F.R. § 300.510(a)(1) (2006).[2]) The resolution session need not be held if it is waived by both parties in writing or the parties agree to use mediation. (§ 1415(f)(1)(B)(i)(IV); 34 C.F.R. § 300.510(a)(3).) There are no provisions of law that allow a parent or a Local Education Agency to unilaterally waive the resolution meeting. (71 Fed. Reg. 47602, No. 156 (Aug. 14, 2006.)

[1] All statutory citations are to title 20 United States Code unless otherwise indicated.

[2] All subsequent references to the Code of Federal Regulations are to the 2006 version.

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 local educational agency is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made and documented, the local educational 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).)

DISCUSSION

District provided the sworn declaration of its attorney, with accompanying exhibits in the form of email communications between the attorneys for each party, in support of its motion to dismiss. That evidence shows the following. On May 14, 2018, District's attorney emailed Student's attorney asking if Student planned to participate in either a resolution session or mediation with District. The email was sent within the 15-day timeline for District to convene a resolution session. Student's attorney responded the same day that he was reaching out to his client and would respond to District as soon as he could.

On the late evening of May 15, 2018, after business hours, Student's attorney emailed District's attorney stating "We are willing to waive the resolution session if the District is amenable to that. We have already had one shot at something broadly equivalent. We would consider a scheduling a mediation for early June."

On the morning of May 16, 2018, District's attorney responded that she would try to obtain a mediation date for early June. About an hour later, a legal secretary for District's attorney emailed Student's attorney proposing two dates for the mediation. Student's attorney responded almost immediately that Student was available for mediation on June 7, 2018. Shortly thereafter, in the afternoon of May 16, 2018, the parties jointly submitted a request for mediation with OAH, requesting June 7, 2018, as the mediation date, as agreed to by the parties in their emails. OAH scheduled the mediation for the date the parties requested.

On the morning of June 6, 2018, Student's attorney called OAH to cancel the June 6, 2018 mediation. He thereafter emailed District's attorney informing her that Student had to cancel the mediation because of unforeseen circumstances. He indicated he would be in touch with District's attorney to arrange an alternative date for the mediation.

Student's attorney did not thereafter contact District's attorney with proposed dates. Therefore, on June 12, 2018, District's attorney emailed Student's attorney proposing three alternative mediation dates in June 2018. She also proposed continuing the hearing. About a half hour later, District's counsel emailed Student's counsel that District was no longer available the first of the three proposed dates for mediation but was available the other two dates. District's attorney also proposed continuing the hearing until late September, 2018. Student's attorney emailed back that he was discussing the matters with his client but that he

could not agree to continue the hearing to late September. District's attorney responded to Student's attorney by email the evening of June 12, 2018, noting that the next day was the last day for the parties to request mediation and/or to request a continuance. She therefore asked that Student's attorney let her know if Student would agree to one of the already proposed alternative dates for mediation. She also requested alternative dates that Student would be available for hearing.[3]

On June 13, 2018, District's attorney telephoned Student's attorney to discuss scheduling mediation and continuing the hearing. Student's attorney informed her that Parent had difficulty traveling to the mediation. Student's attorney did not agree to the proposed mediation dates and did not agree to the continuance. The afternoon of June 13, 2018, District's attorney emailed Student's attorney reiterating the parties' agreement to forego resolution in lieu of mediation and reiterating District's desire to proceed with mediation as previously agreed. District's attorney also informed Student's attorney that District would have to file the instant motions if she did not hear back from Student's attorney.

Student's attorney did not respond to District's attorney's reiterated request for mediation dates. Instead, he served her with Student's prehearing conference statement.

In his opposition to District's motions, Student denies that he agreed to waive resolution in favor of mediation. Student then unjustifiably mischaracterizes District's email correspondence as a "trap" rather than an "honest good faith request" to waive resolution. Student's position is not supported by the evidence. To the contrary, it is apparent from the content and tenor of the emails that District requested to waive resolution and instead mediate the case. It is apparent that District relied on Student's response that "We are willing to waive resolution session if the District is amendable to that. We have already had one shot at something broadly equivalent." The only logical interpretation of Student's language is that Student was agreeing to the proposal to waive resolution and instead schedule mediation because some prior meeting between the parties had not proved fruitful. Student's subsequent action in agreeing to a mediation date and jointly filing the request for mediation with OAH confirms that reading of the parties' correspondence.

Because the intent of the parties was to waive resolution, District did not attempt to make efforts, reasonable or not, to have Parent participate in a resolution session. Dismissal of this case is therefore not warranted. District's motion to dismiss is therefore denied.

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[3] A portion of the parties' emails from June 12, 2018, contained references to settlement terms. Both parties attached emails from that date to their pleadings in this matter. The parties are directed in the future to redact any reference to settlement discussions in their pleadings unless the settlement discussions are relevant to the motion at hand. Here, there was no reason to include the information regarding the parties' settlement discussions.

District proposes in the alternative that OAH grant a continuance and schedule mediation. Mediation is voluntary and OAH therefore cannot require Student to participate in a mediation session. However, Student is required to participate in resolution. Here, District relied on Student's apparent agreement to waive resolution in favor of mediation and therefore District did not attempt to schedule a resolution session. Student subsequently was unwilling or unable to participate in mediation and failed to try to schedule new dates after having to cancel the first mediation date.

Given these circumstances, including a possible lack of a meeting of the minds on the issue of resolution, equity favors extending the procedural timelines in this case and ordering the parties to participate in a resolution session. District shall convene a resolution session within 15 calendar days of the date of this Order.

ORDER

1. District's motion to dismiss or, in the alternative to continue the proceedings, is denied.

2. The parties are ordered to participate in a resolution session within 15 calendar days of this order. District shall propose at least three possible dates to Student for holding the resolution session.

3. Parent is ordered to participate in the resolution session. If Parent is physically unable to attend the resolution session in person, she may participate by telephone or other electronic means.

4. The procedural timelines for this case are extended. All previously scheduled dates are vacated. The timeline for hearing shall recommence as of the date of this Order. OAH will issue a new scheduling order setting a new prehearing conference date and a new due process hearing date.

DATE: June 18, 2018

DocuSigned by:
Darrell Lepkowsky
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DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings