**BEFORE THE**
**OFFICE OF ADMINISTRATIVE HEARINGS**
**STATE OF CALIFORNIA**

# IN THE MATTER OF:

# PARENT ON BEHALF OF STUDENT,

**v.**

# CHULA VISTA ELEMENTARY SCHOOL DISTRICT.

# OAH CASE NUMBER 2019090213

## PREHEARING CONFERENCE ORDER AND EXTENSION OF PROCEDURAL TIMELINE

On September 21, 2019, Administrative Law Judge Judith L. Pasewark Office of Administrative Hearings held a telephonic prehearing conference. The Administrative Law Judge will be referred to as an ALJ. The Office of Administrative Hearings will be referred to as OAH.

Parent did not appear for the prehearing conference. The prehearing conference was set for 3:00 PM. There was no answer the telephone number provided by Parent. The ALJ called the telephone number provided by Parent at 3:00 PM , and again at 3:10 PM. The ALJ left a message that Parent was scheduled for a telephonic prehearing conference at 3:00 PM.

Pamela S. Townsend, Attorney at Law, appeared on behalf of Chula Vista Elementary School District. The PHC not was recorded. Based upon discussion with the counsel, the ALJ issues the following order:

## MOTION TO DISMISS

On September 5, 2019, Parent filed with the Office of Administrative Hearings a due process hearing request (complaint) on behalf of Student naming Chula Vista Elementary School District. Chula Vista Elementary School District is referred to as Chula Vista.

On October 18, 2019, Chula Vista filed a motion to dismiss Student's complaint due to Parent's non-participation in a mandatory resolution session. On October 21, 2019 Parent filed an opposition to the motion to dismiss, which failed to include a proof of service on Chula Vista.

## APPLICABLE LAW

A local educational agency is required to convene a meeting with the parents and the relevant members of the Individualized Education Program team within fifteen 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).) All references to the Code of Federal Regulations are to the 2006 version.

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 local education agency is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made and documented, the local education agency may, at the conclusion of the thirty-day period, request that a hearing officer dismiss the complaint. (34 C.F.R. §300.510(b)(4).)

## DISCUSSION

Chula Vista's motion, indicates that Parent refused to attend a resolution session scheduled on any of the dates offered by Chula Vista. Parent verbally indicated non-consent to a resolution session, and requested written legal authority for requiring parental presence at a resolution session. Chula Vista provided statutory authority to Parent and provided a range of options for parental attendance.

Chula Vista filed its motion after the end of the thirty-day resolution period, which dates from the filing of Student's complaint.

Student's opposition indicated that due to Parent's work schedules they were unavailable for resolution session on any day except Saturdays. Parent did not want to attend a resolution session, and requested that Student's case proceed directly to mediation. Chula Vista did not agree to waive resolution session, and Parent seeks an order from OAH compelling Chula Vista to set the matter for mediation.

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 if the parent refuses to participate in a resolution session and Chula Vista provides appropriate documentation supporting its motion to dismiss.

There has been no agreement to waive the resolution or proceed to mediation in lieu of the resolution session in this case. Moreover, Chula Vista has established that it made reasonable efforts to obtain parent's participation in a resolution session prior to filing its motion to dismiss, and it documented those reasonable efforts in its motion to dismiss. Student has not provided OAH with an adequate reason for failing to participate in a resolution session within thirty days. Further, notice is given to Parent

that OAH schedules mediation Monday through Friday, and due process hearings Tuesday through Thursday.

Parent was unavailable by telephone for the prehearing conference and did not participate in further discussion of Chula Vista's motion to dismiss. Therefore, rather than dismiss at this time, the procedural timeline in this matter shall be extended to give Parents another opportunity to participate in a resolution session.

## ORDER

1. Chula Vista Elementary School District's motion to dismiss is denied without prejudice, as the procedural timelines are extended to permit parties to participate in a resolution session meeting.
2. All previously set dates in this matter are vacated.
3. The parties are ordered to participate in a resolution session within ten 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 on October 21, 2019.
5. OAH shall issue a new Scheduling Order setting new dates for a prehearing conference and due process hearing at that time.

6. In the event Parent fails to attend a reasonably rescheduled resolution session, Chula Vista Elementary School District may renew its motion to dismiss.

**IT IS SO ORDERED.**

DocuSigned by:
Judith Pasewark
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DATED: October 21, 2019

Judith Pasewark
Administrative Law Judge
Office of Administrative Hearings