BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

CORONA-NORCO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2020020889

ORDER DENYING MOTION TO DISMISS WITHOUT PREJUDICE, REQUIRING PARENT PARTICIPATION IN RESOLUTION SESSION, AND RESETTING PROCEDURAL TIMELINES

JUNE 2, 2020

On February 21, 2020, Student filed a due process hearing request with the Office of Administrative Hearings, called OAH. Student named Corona-Norco Unified School District as respondent. OAH granted Students two requests for continuance and this matter is currently scheduled for hearing beginning June 16, 2020.

On May 26, 2020, Corona-Norco filed a motion to Dismiss Student's due process hearing request for failure to participate in a mandatory resolution session. The motion

is supported by the sworn declaration of Corona-Norco's counsel and numerous attached correspondence between the district and Parent. Student did not respond to the motion.

APPLICABLE LAW

A local educational agency is required to meet with the parents and Student's relevant Individualized Education Program or IEP team members within 15 days of receiving Student's complaint. (20 U.S.C. § 1415(f)(1)(B)(i)(I); 34 C.F.R. § 300.510(a)(1) (2006). This meeting is called a resolution session, and it can be waived in writing by both parties or if they agree to use mediation. (34 C.F.R. § 300.510(a)(3).)

If the parents do not attend the resolution session, and it was not waived, there is no due process hearing until the resolution session waived or held. (34 C.F.R. § 300.510(b)(3).) The respondent can request the case be dismissed after the 30-day period, if it documented reasonable efforts to hold the resolution session and the parents did not attend. (34 C.F.R. §300.510(b)(4).)

DISCUSSION

Corona-Norco's motion establishes that it has made and documented reasonable attempts to obtain Parent's participation in a resolution session. Corona-Norco sent Parent three letters dated February 28, 2020, March 12, 2020, and May 14, 2020, along with invitations to attend a resolution session on seven proposed dates. Corona-Norco also informed Parent that Parent could propose alternate dates or agree to participate in mediation instead of the resolution session. It included a check-box form for Parent to complete and return indicating Parent's preference of dates and manner of proceeding. Additionally, its counsel has left numerous voicemail messages with Parent seeking to obtain agreement to participate in a resolution session.

Based on Parent's March 4, 2020 return correspondence, Parent believed that he already participated in a resolution session on February 13, 2020. However, as Corona-Norco explained to Parent in its March 12, 2020 letter, this meeting occurred prior to the filing of Student's request for due process and therefore did not constitute a resolution session. Parent's correspondence also indicates Parent's belief that courts are closed and that he is unwilling to participate in mediation without legal representation.

Parent is required to participate in a resolution session before a due process hearing may be commenced. Corona-Norco has made many attempts to convene a resolution session but Parent has not been willing to participate. Therefore, no resolution session has been held. Further, there was no written agreement to waive the resolution or proceed to mediation in lieu of the resolution session. Corona-Norco established that it made reasonable efforts to obtain parental participation before filing its motion to dismiss. OAH has discretion to dismiss this matter based on Parent's failure to participate in a resolution session.

However, Student should not be punished for Parent's mistaken belief that he already participated in resolution on February 13, 2020. The circumstances of this case warrant affording Parent an additional opportunity to participate in the mandatory resolution session, unless the parties both agree in writing to waive the resolution session or proceed to mediation in lieu of the resolution session. Accordingly, the motion to dismiss is denied without prejudice. Instead, the procedural timelines are reset, a new scheduling order will be sent to the parties, and a resolution session shall be held. Nothing in this Order prevents Corona-Norco from re-filing a motion to dismiss should Parent fail to participate in a resolution session.

ORDER

1. Corona-Norco's motion to dismiss is denied without prejudice.
2. All previously set dates in this matter are vacated. The procedural timelines are reset as of the date of this order.
3. OAH will issue a new scheduling order with the prehearing conference and hearing dates.
4. The parties are ordered to participate in a resolution session within 30 days of this Order or jointly agree to waive the resolution session.

IT IS SO ORDERED



Theresa Ravandi

Administrative Law Judge

Office of Administrative Hearings