BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

OAKLAND UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2020120240

# ORDER GRANTING OAKLAND'S MOTION TO DISMISS FOR LACK OF PROSECUTION

AUGUST 4, 2021

On December 7, 2020, Parents on behalf of Student filed a request for due process hearing, referred to as a complaint, with the Office of Administrative Hearings, naming Oakland Unified School District. The Office or Administrative Hearings is referred to as OAH. On August 3, 2021, Oakland requested dismissal of this matter due to Student's counsel failure to prosecute the case.

OAH is obligated to conduct a due process hearing and render a decision within 45 days of receipt of the due process notice unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) Thus, the Individuals with Disabilities Act, call IDEA,

requires speedy resolution of a complaint. As a result, continuances are disfavored. Good cause may include the unavailability of a party, counsel, or an essential witness due to death, illness, or other excusable circumstances; substitution of an attorney when the substitution is required in the interests of justice; a party's excused inability to obtain essential testimony or other material evidence despite diligent efforts; or another significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. (Ed. Code, § 56505, subd. (f)(3); Cal. Rules of Court, rule 3.1332(c).)

On December 7, 2020, OAH issued multiple orders including a Scheduling Order and an Amended Order Setting Procedures for Filing Exhibits Electronically Using Caselines, called an Amended Order. The Amended Order specifically set forth instructions on how to register, organize Caselines documents, properly upload documents five business days before the hearing to satisfy the parties document exchange obligation under Education Code section 56505 subsection (e)(7) , numbering and naming exhibits after upload, numbering exhibits as instructed in the prehearing conference order, adding and removing exhibits, notice that Caselines will not allow parties to upload evidence beginning three business days before the start of hearing, resources for support, and the OAH contact information should assistance be needed. The Scheduling Order set hearing to begin on February 2, 2021.

On January 21, 2021, OAH granted Student's counsel request to withdraw as counsel because of a breakdown of the attorney-client relationship and granted Student's request for a continuance to seek new counsel the following day. OAH continued the hearing to April 27, 2021. On April 5, 2021, Student's counsel file a notice of representation of Student, and filed for leave to amend the complaint on April 15, 2021, which was granted. However, the administrative law judge explained in the April 19, 2021 order granted leave to amend that no further continuances would be granted

absent exigent circumstances since granting the motion to amend will result in a significant extension of time from the original filing date. The due process hearing was then set for June 15, 2021.

On May 20, 2021, OAH granted the parties' request to mediate on June 1, 2021. On June 1, 2021, the parties requested a second mediation and that a second mediation would likely resolve the matter. Based on this representation, OAH granted a second mediation that was requested on the same day as the prehearing conference. Thus, OAH continued the hearing for one week to June 22, 2021, to avoid unnecessary expenditures associated with preparing for hearing should mediation be successful.

The second mediation proved to be unsuccessful, and the parties were required to exchange evidence by June 15, 2021, under Education Code section 56505 subsection (e)(7) and were given Caselines links to properly upload the documents. Due to a Caselines technical issue and outside the parties' control, they were unable to successfully upload the documents on June 15, 2021. However, Oakland successfully uploaded its evidence to Caselines on June 16, 2021, and also emailed its exhibits directly to Student's counsel on June 15, 2021. On June 16, 2021, Student's counsel represented that she would provide the evidence to Oakland upon return from an appointment but failed to do so. Then, Oakland twice requested Student's counsel produce the hearing exhibits and Student's counsel represented that she would produce the documents on June 17, 2021. Student's counsel failed to produce the exhibits. Further, Student's counsel failed to meet and confer with Oakland on June 17, 2021, as OAH ordered, to discuss witness scheduling, exhibits, and stipulations, and claimed she had other appointments that day that could not be missed. Student's counsel's calendar that she produced to OAH showed a hair appointment for June 17, 2021, and nothing else. Thus, on June 18, 2021, Oakland requested Student's evidence be

excluded, or in the alternative that OAH order Student to produce the hearing evidence, and sanctions for Student's failure to: produce hearing evidence, meet and confer as ordered, and provide a witness schedule for hearing. Oakland argued that Student counsel's delays incurred significant financial burden due to bad faith tactics, and further Student counsel's conduct demonstrated a lack of competence under the California Rules of Professional Conduct which contributed to Student's loss of educational opportunities.

On June 18, 2021, Student opposed Oakland's request citing her ongoing medical disability and other work issues, and requested a month continuance, stating that her doctor placed her off work for four weeks. On June 21, 2021, Student's counsel produced a doctor's letter that required her to be placed off work for four weeks beginning June 17, 2021. However, Student's counsel failed to explain why she could not have emailed or overnighted the exhibits to Oakland on June 15 or June 16 and uploaded the documents to Caselines on June 16, 2021.

On June 21, 2021, OAH continued the hearing to July 20, 2021, and denied Oakland's motions to exclude evidence and for sanctions and set an order to show cause to shift costs. In the order, the administrative law judge determined the following facts and admonished Student's counsel as follows:

1. "The administrative record in Student's case is replete with documentation that Student's counsel's medical condition has interfered with Student's counsel's ability to provide legal representation for Student to proceed to hearing on this case without delay."

2. "Counsel's medical condition in this case that has been pending for six months, with both prior knowledge of the condition and failure to seek reasonable accommodations, does not constitute good cause. Rather, good cause is established because Student counsel's documents establish that counsel is currently unable to competently represent Student in this matter.

3. "Student is hereby on notice that no further continuance will be granted based on Student's Counsel's known and ongoing medical condition. Student is encouraged to consider alternatives going forward, including continued representation by Counsel with reasonable accommodations sought to accommodate her medical condition, Counsel's association with an additional attorney, substitution of counsel, or proceeding to hearing without counsel."

On July 12, 2021, OAH granted Oakland's unopposed motion to continue the hearing due to the unavailability of three essential witnesses that were listed on both parties' witness lists. The administrative law judge continued the matter to August 3, 2021. On July 21, 2021, OAH denied Oakland's motion to shift costs based on Student counsel's medical condition and unrelated inability to competently represent Student, and further admonished Student's counsel stating that "Counsel's continued health condition shall not be a basis of any further delays in the resolution of this matter."

On July 27, 2021, the parties were required to exchange evidence for the August 3, 2021, hearing under Education Code section 56505 section (e)(7). Student's counsel stated that she had difficultly uploading to Caselines yet failed to seek help by contacting OAH as explained to her in the December 7, 2021 Amended Order. Instead, Student's counsel provided a link to Oakland to access the documents through Box.com. The documents were unlabeled, with no exhibit numbers or cover sheets, and a blank

table of contents. After requests to fix the issues, Student's counsel stated that "you have access to my folder if you feel that you are being deprived of the documents." Student's counsel did not fix the issues and made no attempts to email or overnight any exhibits in a usable format in compliance with a proper exhibit exchange.

On July 28,2021, Student's counsel uploaded a table of contents to Caselines and Box.com. However, it is unclear as to why she failed to upload her exhibits to Caselines on July 28, 2021. She stated that she received an error message when she attempted to upload the exhibits to Caselines, yet she failed to seek help through the resources that were provided to her on December 7, 2020, or contact OAH for assistance. Instead, Student's counsel continued to add and delete documents in Box.com that did not correspond to the table of contents, were not bate-stamped, and included exhibits that were blank with only cover sheets, a 627-page exhibit that appeared to include multiple documents, and cover sheets that included different numbers of exhibits.

The same day, Oakland filed a motion to exclude Student's evidence as unusable and that it prejudiced its ability to prepare for hearing. The following day, Oakland filed a further motion to exclude evidence adding that Student's counsel failed to properly exchange exhibits as of 4:00 p.m. on July 29, 2021. Further, Oakland requested Student produce a witness list that Student's counsel represented that she would produce on July 28, 2021, and failed to do. Oakland argued that it neither had usable evidence nor any idea who was expected to testify on the first day of hearing.

On July 30, 2021, Student opposed the motion and requested sanctions citing again her medical issues and also adding computer issues, other work obligations, and travel difficulties, and represented that she would upload the exhibits to Caselines that

evening. However, Student failed to request Caselines be opened to upload documents or in the alternative exchange usable exhibits with Oakland at any time through August 3, 2021.

On August 3, 2021, 90 minutes before the scheduled hearing, Student's counsel, for the first time, requested accommodations. Student's counsel then appeared at hearing on August 3, 2021, at 9:30 a.m., without any uploaded Caselines exhibits, no further attempts to exchange usable exhibits, or any exchange of a witness list with Oakland, in order to try to mitigate her failure to abide by OAH orders and the Education Code. Clearly, Student's counsel was not prepared to go forward with the hearing on August 3, 2021, which was confirmed when she requested more time to upload exhibits to Caselines, instead of proceeding to hearing. She represented that it would take her about one hour to upload the exhibits to Caselines.

Conversely, Oakland requested a dismissal of the case for failure to prosecute. At approximately 10:15 a.m., the undersigned administrative law judge ordered Student to upload exhibits to Caselines and file with OAH a subpoena duces tecum that was at issue, by 3:00 p.m. and to file her exhibit list by 11:00 a.m. that day. The undersigned took the pending request to exclude evidence, dismissal, request to compel a subpoena duces tecum, and sanctions under submission. The parties were ordered to appear at 3:15 p.m. to discuss next steps and were informed that Caselines would be opened to upload documents as soon the parties went off the record. After the parties were excused, the undersigned confirmed at 10:25 a.m. that Caselines was open and usable by Student's counsel.

Around 11:30 a.m., Student's counsel emailed OAH for help to upload documents, with no explanation of this situation or explanation of the urgency of the

situation. A staff member responded by email and explained that the hearing was scheduled for August 3, 2021, and the administrative law judge would need to order Caselines open. Student's counsel failed to respond to explain that the undersigned had ordered Caselines open earlier that day or call OAH to discuss the matter. If she had, Student's counsel would have received assistance as Caselines was open and usable at that time. Instead, Student's counsel sent a letter to OAH around 12:30 p.m., during lunch, requested Caselines help. Around 1:30 p.m., Student's counsel was assisted by OAH.

By 3:00 p.m., Student's counsel uploaded only 27 exhibits which were out of order and did not comport with the table of contents, such that a new table of contents would need to be generated or the document uploads would need to be redone, further delaying the matter. Student's counsel blamed this on Caselines, stating that it inexplicably jumbled her documents.

At 3:15 p.m., the parties reconvened, and Student's counsel requested more time to continue uploading documents. If a continuance was granted it would put the case out to August 4, 2021, or later. Oakland renewed its motion to dismiss. After a review all of the relevant circumstances and facts in this matter, the undersigned granted Oakland' motion to dismiss. To further continue the proceeding once again to allow Student's counsel to upload further documents is unreasonable, and inevitably, a continuance would follow to allow Oakland to review the documents delaying the proceeding for days. Additionally, a continuance at this late stage of the proceeding does not comport with the prior orders admonishing Student's counsel for her delays. Further, Student's counsel's excuses for her inability to comply with OAH's orders for the August 3, 2021, hearing were unpersuasive. Counsel has access to Caselines since June 15, 2021. Her medical leave ended on July 17, 2021. Counsel had enough time to

properly prepare this case, however, she did not diligently prepare for the August 3, 2021 hearing, even after repeated admonishments about further continuances. After given the opportunity on August 3 to remedy the situation, she did not. At the end of the day, Student's counsel again requested more time to upload documents to Caselines which would further delay this matter.

Following Student counsel's protracted pattern of delay and refusal to comply with OAH orders, dismissal is warranted in this matter. Student counsel's failure to timely prosecute this matter is contrary to the intent of the IDEA and Education Code. Further, the intent of the IDEA and the Education Code that a due process hearing be held expeditiously is consistent with the general policy of this state that plaintiffs prosecute actions with reasonable diligence. (Code Civ. Proc., § 583.130.) Civil actions may be dismissed for delay in prosecution. (Code Civ. Proc., § 583.410, subd. (a)).

Dismissal is warranted here, as Student's counsel has failed to diligently proceed with the complaint. Accordingly, this matter is dismissed for failure of Student's counsel to prosecute the complaint with reasonable diligence.

IT IS SO ORDERED.

Cynthia Fritz

Cynthia Fritz
Administrative Law Judge
Office of Administrative Hearings