BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023050838

ORDER FOLLOWING PREHEARING CONFERENCE, CONTINUING THE MATTER, AND SETTING HEARING ON ORDER TO SHOW CAUSE WHY OAH'S EXPENSES SHOULD NOT BE SHIFTED TO STUDENT'S ATTORNEY

SEPTEMBER 22, 2023

On September 22, 2023, Administrative Law Judge Christine Arden, Office of Administrative Hearings, held a prehearing conference by videoconference. The Administrative Law Judge is called an ALJ. The Office of Administrative Hearings is called OAH. The prehearing conference is called a PHC.

No one appeared on behalf of Student. Donald Erwin, Attorney at Law, appeared on behalf of Los Angeles Unified School District. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

ORDER TO SHOW CAUSE IS SET DUE TO STUDENT'S ATTORNEY'S FAILURE TO TIMELY EITHER DISMISS CASE OR FILE A PREHEARING CONFERENCE STATEMENT

PROCEDURAL BACKGROUND

Student filed Student's Request for Due Process Hearing, called the Complaint, in this matter with OAH on May 23, 2024. On May 23, 2023, OAH served its Scheduling Order Setting Telephonic Prehearing Conference and Due Process Hearing on the parties. On June 26, 2023, ALJ Nisperos granted the parties' joint request for a mediation and to continue the due process hearing. ALJ Nispero's June 26, 2023 Order set the mediation for August 23, 2023, the PHC for September 22, 2023, at 10:00 AM, and the due process hearing for October 3, 2023, through October 5, 2023. ALJ's Nisperos' June 26, 2023 Order further stated: "Prehearing conference statements and motions are due to OAH no later than three business days before the prehearing conference or with a showing of good cause why it was not possible to file the motion by that date."

On August 23, 2023, at 12:41 AM Student's attorney of record in this matter, Bryan Winn, left a voicemail on OAH's settlement phone line cancelling the mediation set for later that day. Winn further stated in the voicemail message that the District was aware of the cancellation. On September 20, 2023, OAH was contacted by Rudy Gutierrez, Director of Litigation for Los Angeles Unified School District, who informed

OAH that this case was settled by the parties on September 14, 2023, and it was waiting for Student's attorney to file a request for dismissal of the Complaint with OAH.

On September 21, 2023, at 11:39 PM Student's attorney filed with OAH a request for dismissal of the Complaint, along with a copy of the Final Settlement Agreement and Release, which was fully executed by the parties on September 14, 2023. At the direction of the ALJ the OAH case manager for this case, Tammy Cookerly, contacted counsel for both parties before 8:24 AM on September 22, 2023, and informed them that counsel must appear at the PHC scheduled for 10:00 AM on September 22, 2023. Cookerly spoke directly Student's attorney, Winn, and Diana Massaria, a representative of Los Angeles Unified School District. Winn called Cookerly and spoke with her a second time at 8:48 AM. In the second telephone conversation Winn informed Cookerly he would not appear at the PHC scheduled at 10:00 AM on September 22, 2023, and "if there is a problem with the dismissal, that ALJ Arden could call him personally."

Student failed to timely file either a request for dismissal of the Complaint, a PHC statement, or a completed Participants Information for PHC and Video Due Process Hearing form with OAH before the scheduled September 22, 2023 PHC. Student's failure to timely file the requisite documents caused OAH to incur expenses in connection with the ALJ's preparation for the September 22, 2023 PHC. This is not the first time attorney Winn has failed to timely file required documents before a PHC, which causes OAH to incur unnecessary expenses. Therefore, the ALJ set a hearing for an Order to Show Cause, called the OSC, on why expenses incurred by OAH should not be shifted to Student's attorney for the ALJ's preparation for the PHC, the ALJ's appearance at the PHC, the ALJ's preparation for the hearing on the OSC, and the ALJ's appearance at the hearing on the OSC. At the hearing on the OSC the ALJ will also

consider ordering further sanctions against Winn for his failure to appear at the September 22, 2023, 10:00 AM PHC.

The briefing and hearing schedule on the OSC, and the schedule for other proceedings in this case are as follows:

1. Los Angeles Unified School District may file a motion or other document it would like the ALJ to consider in ruling on the OSC by 5:00 PM on September 27, 2023.
2. Student shall file Student's response to the OSC and opposition or response to any motion or other document filed by Los Angeles Unified School District by 5:00 PM on September 29, 2023. These documents must each be supported by a declaration signed under penalty of perjury.
3. The hearing on the OSC shall occur via videoconference at 1:00 PM on October 6, 2023.
4. If necessary, the PHC in this matter will occur immediately following the hearing on the OSC on October 6, 2023.
5. The hearing in this matter is continued to October 17, 2023, through October 19, 2023, and will continue day to day at the discretion of the ALJ.

The request for dismissal of this case will not be processed by OAH until after the ALJ's ruling on the OSC is issued.

The hearing shall begin at 9:30 AM each day and shall generally end at 3:30 PM, unless otherwise ordered. The parties shall immediately notify all potential witnesses of the hearing dates and shall subpoena witnesses, if necessary, to ensure that the witnesses will appear to testify. A party's failure to notify or subpoena a witness to testify will not be considered good cause to continue the hearing.

FAILURE TO COMPLY

The failure to comply with this Order may result in sanctions.

IT IS SO ORDERED.

Christine Arden

Christine Arden

Administrative Law Judge

Office of Administrative Hearings