BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

YUBA CITY UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023020646

ORDER DISCHARGING ORDER TO SHOW CAUSE CONCERNING FAILURE TO APPEAR AT PREHEARING CONFERENCE

April 3, 2023

On March 22, 2023, Student filed a prehearing conference statement in this matter. On March 23, 2023, Yuba City filed a motion to strike Student's statement on the ground that it did not contain the concise statement of issues required by OAH's Scheduling Order defining the requirements for prehearing conference statements. On March 27, 2023, Student filed an opposition to the motion. However, no one appeared for Student at the prehearing conference, called a PHC, which started as scheduled at 10:00 a.m. on March 27, 2023.

On March 27, 2023, OAH issued an Order to Show Cause requiring a response from Student's attorney on two subjects. One was the apparent repeated disregard by Student's attorney of OAH's pleading requirement for a concise statement of issues in a PHC statement. That issue will be addressed in a separate order. The other subject concerned Student's attorney's failure to appear at the PHC, which is addressed here.

On March 28, 2023, Student filed a return to the Order to Show Cause supported by the declarations of Robert Burgermeister and Lynda D. Williams, attorneys in Ms. Bayne's firm. Taken together, those declarations offer an explanation of Student's failure to appear at the PHC that is adequate to excuse Student's attorney from having the matter dismissed for the failure to diligently prosecute.

By March 24, 2023, the only attorney who had appeared for Student on any pleading was Ms. Bayne, and she had not filed the Participant Information Form required for the upcoming March 27, 2023 PHC. OAH therefore sent the digital invitation to the Zoom meeting that would host the PHC by email to Ms. Bayne but not to anyone else in her office. According to Ms. Williams, she had been assigned the duty of appearing at the PHC in this matter, but was also assigned to a PHC in a different matter at the same time in *Student v. Westlake Charter School*, OAH No. 2023020674. The only Zoom invitation she received concerned the Westlake matter. Ms. Williams declares that "I was not aware of any other emails from OAH for the purpose of attendance at a PHC for March 27, 2023 at 10:00 a.m."

Ms. Williams briefly mistook the invitation to the Westlake PHC as the invitation to the PHC in this matter, and logged into the Westlake PHC only to realize her error at about 10:17 a.m. She then excused herself and attempted to log on to the PHC in this matter, but that PCH had already concluded. In short, the invitation sent to Ms. Bayne in

this matter was not forwarded to Ms. Williams in time for her to use it to attend the March 27, 202310:00 a.m. PHC in this case.

These errors are at worst negligent. They do not rise to the level of conduct that could justify dismissal of the matter for failure to prosecute it, or for other sanctions. Accordingly, the Order to Show Cause is discharged insofar as it addresses Student's failure to appear at the PHC, and no further action will be taken concerning that issue.

IT IS SO ORDERED.

Charles Marson

Charles Marson
Administrative Law Judge
Office of Administrative Hearings