BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS OF:

PLEASANT VALLEY SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT,

OAH CASE NUMBER 2019090819

and

PARENT ON BEHALF OF STUDENT,

v.

PLEASANT VALLEY SCHOOL DISTRICT AND VENTURA COUNTY OFFICE OF EDUCATION,

OAH CASE NUMBER 2019080672

ORDER GRANTING REQUEST FOR CLARIFICATION AND VACATING DISMISSAL WITHOUT PREJUDICE

On August 19, 2019, Student filed with the Office of Administrative Hearings a request for due process hearing, referred to as a complaint, naming Pleasant Valley

School District and Ventura County Office of Education. The Office of Administrative Hearings is referred to as OAH. Pleasant Valley and Ventura are collectively referred to as Respondents.

On September 20, 2019, Pleasant Valley filed a complaint naming Student. On September 20, 2019, Pleasant Valley filed a motion to consolidate Student's case with Pleasant Valley's case.

On September 30, 2019, OAH held a Prehearing Conference, referred to as PHC, in Student's case. During the PHC, OAH granted Pleasant Valley's motion to consolidate the two cases. OAH named Pleasant Valley's case the primary case, continued the PHC to October 7, 2019, and set the consolidated cases for hearing on October 15, 16, and 17, 2019.

On October 4, 2019, in anticipation of the October 7, 2019 PHC, Student filed and served a PHC Statement. Student included copies of his medical records from Dr. Davin Lundquist and physical therapist Rosanna Kirkendall-Azer as part of his PHC Statement.

The consolidated cases proceeded to hearing on October 15 and 16, 2019. Respondents put on evidence in their case and in defense of the issues identified in Student's complaint. Student did not appear on October 15 or 16, 2019. For reasons not relevant here, Student sought and was granted additional dates for hearing. The hearing was continued to November 13 and 14, 2019.

On November 13, 2019, the hearing commenced as scheduled. All parties appeared. Mother and Father were sworn and presented testimony regarding medical records related to Student's need for physical therapy. Parents did not have copies of the medical records at hearing, stating they were already filed with OAH. The undersigned ALJ presented Parents with a copy of the medical records for identification.

The ALJ informed Parents that records on file with OAH were not evidence and that evidence needed to be submitted during the hearing to be considered. Parents sought to introduce the records as evidence. Accordingly, a fifteen-minute recess was taken so that the medical records could be photocopied for all parties and offered into evidence.

During the recess, Parents and Student left the hearing. Parents did not inform the ALJ they would be leaving during the recess. They did not inform the officer attending as a bailiff, or any other party or counsel whether they would return after the recess. The ALJ learned Parents and Student left the hearing when they did not appear at the scheduled time following the recess. The ALJ extended the recess for one-hour in order to allow Parents time to return to hearing. Parents did not return.

The ALJ went back on the record and informed the individuals present that Student's case would be dismissed, without prejudice, for failure to prosecute. The matter was continued for briefing until December 4, 2019, at which time the matter would be submitted for decision.

On November 14, 2019, the undersigned issued a written order granting the continuance and asking the parties to brief the issues in the consolidated cases.

On November 15, 2019, Pleasant Valley filed a motion for clarification regarding filing of written closing briefs as to the consolidated cases. OAH did not receive a response from Student.

APPLICABLE LAW

The California Administrative Procedures Act and State and federal special education statutes and regulations do not specifically address whether a dismissal should be granted with or without prejudice for the failure to appear at a due process

hearing or to abandon the hearing, once it began. The Code of Civil Procedure, section 581, et seq., addresses such motions in the context of state civil proceedings. Although not binding in special education matters, the Code of Civil Procedure can provide guidance in this situation. Specifically, section 581, subdivision (b)(5), states that a matter may be dismissed by, "the court, without prejudice, when either party fails to appear on the trial and the other party appears and asks for dismissal." Section 581, subdivision (d), provides for the dismissal to be with prejudice but only, "when upon the trial and before the final submission of the case, the plaintiff abandons it." Section 581, subdivision (a)(6) defines the commencement of trial as, "at the beginning of the opening statement or argument of any party or his or her counsel, or if there is no opening statement, then at the time of the administering of the oath or affirmation to the first witness, or the introduction of any evidence."

The provisions of section 581 are not an exclusive enumeration of the court's inherent power to dismiss a complaint. (Code of Civ. Proc., §§ 581, subd. (m) and 583.150.)

DISCUSSION

In this case, the ALJ administered an oath and obtained testimony from Parents. After Parents left, Pleasant Valley offered some testimony in rebuttal.

The guidance provided in section 581, subdivision (b)(5), would not apply here because the hearing had commenced and Pleasant Valley did not move to dismiss. Considering the guidance provided in section 581, subdivision (d), in this case, it can be argued that Parents abandoned Student's case by leaving the hearing without notice and before submitting medical records to which they referred in their testimony. However, Parents did appear on the third day of hearing, offered some evidence, and

did not state on the record whether they intended to continue prosecuting Student's case. Parents may, but are not required to, submit written closing argument on Student's behalf on or before December 4, 2019. Because of the voluntary nature of filing written closing arguments, failing to do so cannot be considered evidence of abandonment.

Turning next to the court's inherent authority to dismiss Student's complaint, under section 583.150. Courts have identified two significant factors in exercising inherent authority to dismiss. (*Lyons v. Wickhorst* (1986) 42 Cal.3d. 911, 915.) The first looks to whether a party's conduct was "severe and deliberate." (*Id.*, at 231.) The second considers the availability of alternatives less severe than dismissal to remedy the situation. (*Ibid.*)

Here, Student failed to appear for the first two days of hearing and left abruptly during a recess on the third day of hearing. However, Student demonstrated an intent to prosecute his case by requesting additional hearing dates, by appearing on the third day of hearing, and by offering the testimony of Parents. Leaving a hearing, once started, without notifying the ALJ is certainly deliberate. However, given that evidence had been submitted on the issues by both sides, dismissal is not warranted.

Pleasant Valley's Motion for Clarification is granted. The record reflects Student's case was dismissed without prejudice on the record on November 13, 2019. The Motion for Clarification causes the ALJ to reconsider the dismissal without prejudice. In view of the authorities, under the facts and circumstances, the dismissal on the record without prejudice is vacated. The matter shall proceed to decision as to all issues and as to all parties in the consolidated matter as set forth in the Order Granting Continuance to file Written Closing Briefs, issued on November 15, 2019.

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DATED: November 22, 2019

Cole Dalton
Administrative Law Judge
Office of Administrative Hearings