BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

PERRIS UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2023100314

ORDER SETTING HEARING ON ORDER TO SHOW CAUSE AS TO WHY MATTER SHOULD NOT BE DISMISSED FOR FAILURE TO PROSECUTE AND WHY OAH'S COSTS SHOULD NOT BE SHIFTED TO STUDENT'S ATTORNEY FOR FAILURE TO APPEAR AT THE PHC, AND CONTINUING PREHEARING CONFERENCE AND DUE PROCESS HEARING

NOVEMBER 20, 2023

On October 10, 2023, Student filed a request for due process hearing, called a complaint. Pursuant to a Scheduling Order served by the Office of Administrative Hearings, called OAH, on the parties on October 11, 2023, a videoconference prehearing conference, called the PHC, was set for November 20, 2023 at 10:00 AM, and the

videoconference due process hearing was set for November 28, 2023, through November 30, 2023, beginning at 9:30 AM each day.

If the parent and local education agency have not resolved the due process complaint within 30 days of the receipt of the complaint, OAH is required to issue a decision within the next 45 days, unless a continuance is granted for good cause. (20 U.S.C. § 1415(f)(1)(B)(ii); 34 C.F.R. § 300.51; Ed. Code, § 56502, subd. (f).)

At 1:14 PM on November 17, 2023, Administrative Law Judge, called an ALJ, Christine Arden, emailed three attorneys with the Law Office of Sheila Bayne, Student's counsel of record, specifically, attorneys Sheila Bayne, Robert Burgermeister, and Leroy Sumter, at their email addresses provided to OAH by Student, an evite to the scheduled PHC. The ALJ simultaneously emailed two of district's attorneys the same evite to the PHC. That PHC evite contained both a link to join the videoconference PHC and a telephone number at which an attorney could call into the PHC, if necessary.

ALJ Arden opened the videoconference PHC via Zoom at approximately 9:50 AM on November 20, 2023, by connecting to the link provided in the PHC evite sent to all counsel. Attorneys for Perris Union High School District, Rebecca Diddams and Austin Jones, both appeared at the PHC before 10:00 AM on November 20, 2023. When no attorney appeared at the PHC on behalf of Student by 10:05 AM, the ALJ requested attorney Diddams to call Student's attorney. Attorney Diddams attempted to contact via telephone Student's attorneys at the one phone number she had for Student's counsel. However, Diddams was not able to reach any of Student's attorneys in that call. ALJ Arden then attempted to contact via telephone Student's attorneys at two other phone numbers OAH had for Student's counsel. However, the ALJ was not able to reach any of Student's attorneys in either of those two telephone calls. A person who

answered one of the numbers said she worked for an answering service and not the law firm.

OAH's case manager assigned to this case, attempted to call Student's attorney, and reached Jim Peters, a paralegal with the Student's attorneys' office. However, Peters put the case manager on hold and did not return, and the call eventually disconnected. The OAH case manager then attempted to call Student's attorney's office numerous other times, but was unable to reach anyone at that office.

The ALJ began the PHC on the record at 10:16 AM. Because the Petitioner's counsel had not appeared at the PHC, the ALJ continued the PHC, and set a hearing on an Order to Show Cause, called an OSC, why this case should not be dismissed for failure to prosecute due to Student's counsel's failure to appear at the PHC, and why OAH's costs incurred in connection with the November 20, 2023 PHC should not be shifted to Student's attorneys. The videoconference hearing on the OSC was set for December 4, 2023, at 3:00 PM. The ALJ further ordered if the case is not dismissed at the hearing on the OSC, the PHC will occur immediately following the hearing on the OSC.

The ALJ also continued the hearing to December 12, 2023, through December 14, 2023, beginning at 9:30 AM each day. The parties were ordered to immediately give all witnesses and parties notice of the continued hearing dates.

Student is ordered to file a brief with OAH by 5:00 PM on November 29, 2023, addressing why this case should not be dismissed for failure to prosecute due to Student's counsel's failure to appear at the PHC, and why OAH's costs incurred in connection with the November 20, 2023 PHC should not be shifted to Student's attorneys. Perris Union High School District may file a response to that brief.

At the December 4, 2023 hearing on the OSC, the ALJ will entertain a motion to shift the district's costs incurred in connection with the November 20, 2023 PHC, if Perris Union High School District elects to file such a motion at least three business days before that hearing.

IT IS SO ORDERED.

Christine Arden

Christine Arden
Administrative Law Judge
Office of Administrative Hearings