BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

OAKLAND UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2019090159

ORDER TO SHOW CAUSE AS TO WHY SANCTIONS SHOULD NOT BE IMPOSED ON STUDENT'S ATTORNEY

On September 5, 2019, Student filed a request for due process hearing, called a complaint. On October 8, 2019, the Office of Administrative Hearings, called OAH, granted the parties' request to set a mediation date and to continue the hearing until the mediation could be held. OAH continued the hearing to December 3, 4 and 5, 2019, scheduled a prehearing conference or PHC for November 22, 2019, and set November 5, 2019, as the day for mediation.

After business hours on November 4, 2019, Student's attorney Brett S. Allen filed a letter requesting that the mediation be cancelled because, "The parties . . . reached a final resolution of the dispute pending signing a written settlement agreement." OAH cancelled the mediation, but the parties did not file a written settlement agreement and Student did not file a dismissal of his case or apprise OAH of the status of the matter.

Although OAH's rules require that each party file a written PHC statement three business days before the PHC, neither party filed a PHC statement. Nor did either party make any attempt to inform OAH about the status of the case, although almost three weeks had passed since Mr. Allen announced that there was a settlement.

The undersigned ALJ convened the PHC on Friday, November 22, 2019. Mr. Allen did not participate; his answering machine stated that he was unavailable. David Mishook participated on behalf of Oakland Unified School District and represented that there was a complete settlement agreement which only needed one or two signatures before a dismissal could be filed. Relying on Mr. Mishook's representations that the signature page of a settlement agreement and a dismissal would most likely be filed before the end of the day, the ALJ continued the PHC to 10:00 a.m. on November 25, 2019. No such documents were filed.

When the ALJ convened the continued PHC by telephone at 10:00 a.m. on November 25, 2019, Mr. Allen was again not available and only his answering machine could be reached. Mr. Mishook participated in the PHC and represented that the previous Friday, November 22, 2019, he had provided all District signatures and related documents to Mr. Allen with the request that Mr. Allen promptly file a dismissal.

At 10:39 a.m. on November 25, 2019, after the second PHC, Student filed the signature page of a settlement agreement and a request for dismissal.

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).)

Here, Student did not diligently pursue this matter, did not filed a PHC statement, did not appear at either of the PHC's on November 22 and 25, 2019, and did nothing to resolve this matter between his November 4, 2019 announcement of a settlement and his tardy filing of it after the second PHC on November 25, 2019. Given the lengthy delays and unnecessary proceedings in this matter, Student is ordered to show cause by declaration no later than noon on December 1, 2019, as to why sanctions should not be imposed on Student's counsel for the costs to OAH of the unnecessary delays and inconclusive PHC's his lack of diligence has occasioned.

IT IS SO ORDERED.

DATED: November 25, 2019

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Charles Marson
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Charles Marson
Administrative Law Judge
Office of Administrative Hearings