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 VACATING ORDER TO SHOW CAUSE AND PREHEARING CONFERENCE

OCTOBER 05, 2023

Student filed a Request for Due Process Hearing, called the Complaint, in this matter with OAH on May 23, 2024, naming Los Angeles Unified School District. 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, Bryan Winn, left a voicemail on OAH's settlement phone line cancelling the mediation set for later that day. The parties settled this matter and entered into a Final Settlement Agreement on September 14, 2023. On September 20, 2023, Rudy Gutierrez, Director of Litigation for Los Angeles Unified School District, informed OAH that this case was settled by the parties, 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 Winn 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.

The PHC was held on September 22, 2023 at 10:00 AM. No one appeared on behalf of Student. Donald Erwin, Attorney at Law, appeared on behalf of Los Angeles Unified School District. Attorney Winn had failed to timely file required documents before a PHC on other occasions in other matters, causing OAH to repeatedly incur unnecessary expenses to prepare for PHCs.

At the September 22, 2023 PHC the ALJ set a hearing for October 6, 2023 at 1:00 PM, on an Order to Show Cause, called an OSC, as to 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, and for Winn's failure to appear at the September 22, 2023 PHC. The ALJ also continued the PHC to immediately following the hearing on the OSC and continued the hearing to October 17, 2023, through October 19, 2023, and further ordered that Student's Request for Dismissal would not be processed until after the ALJ ruled on the pending OSC. The ALJ also Ordered Student to file a document with OAH by 5:00 PM on September 29, 2023, addressing why OAH's costs should not be shifted to Student's attorney.

On September 29, 2023, attorney Winn filed a document taking responsibility for failing to timely file documents three business days before the PHC and failing to appear at the September 22, 2023 PHC. Winn's document further stated he will not make the same error again. In that document Winn apologized to OAH staff for his rudeness. That document further explained that Winn's failure to appear at the September 22, 2023 PHC was due to a recent death of an extended family member.

Based on the representations in Winn's papers, the OSC re why OAH's costs should not be shifted to Student's attorney, and hearing thereon, as well as the Prehearing Conference set for October 6, 2023 at 1:00 PM, are vacated. Following issuance of this Order OAH will process Student's Request for Dismissal.

IT IS SO ORDERED.

Christine Arden

Christine Arden
Administrative Law Judge
Office of Administrative Hearings