

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN DIEGO UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2014051201

ORDER FOLLOWING PREHEARING
CONFERENCE CANCELLING
MEDIATION, CONTINUING
PREHEARING CONFERENCE, AND
SETTING AN ORDER TO SHOW
CAUSE

On July 14, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge Theresa Ravandi, Office of Administrative Hearings. There was no appearance for Student. Amy Bozone, Attorney at Law, appeared on behalf of San Diego Unified School District (San Diego). The PHC was recorded. After the PHC conference, San Diego filed with OAH a letter requesting that Student's case be dismissed based upon the parties having reached a settlement agreement on July 3, 2014. Attached to this letter is a Resolution Agreement dated July 3, 2014, signed by the Parents on July 12, 2014, by Jennifer Parks-Orozco, San Diego's due process special education administrator on July 14, 2014; and signed by Student's attorney Patricia Cromer on an indecipherable date.¹ Student's counsel must be the one to request dismissal of Student's case. **Student has until Thursday, July 17, 2014 at noon, to file a request for dismissal. Otherwise, the order to show cause delineated herein remains.**

On May 27, 2014, Attorney Patricia E. Cromer filed a Request for Due Process Hearing against San Diego. On May 29, 2014, OAH issued a scheduling order that set the matter for mediation on July 1, 2014, a PHC on July 14, 2014, and a due process hearing on July 22, 2014. OAH granted the parties' request that mediation be held on July 15, 2014. On July 7, 2014, OAH staff called both parties to determine whether they were requesting a continuance of the PHC and hearing dates given the re-scheduled mediation date which fell after the PHC date. Student's counsel informed OAH that the parties were working on a settlement and that she would update OAH.

OAH requires a party to file a PHC statement at least three business days prior to the PHC. Here, the parties failed to file a PHC statement for the July 14, 2014 PHC. On July 9,

¹ OAH requests only the signature page of a settlement agreement entered into by the parties. To maintain the confidentiality of this document, it will be locked and password protected in the OAH electronic filing system, inaccessible to the hearing ALJ. The undersigned has not read the submitted agreement, other than to review the signature lines.

2014, OAH staff again called the parties to request an update on this matter and remind them that PHC statements were due that day. Neither party responded to this message.

On July 14, 2014, the undersigned ALJ telephoned Ms. Cromer to begin the PHC. The call went to a voicemail system and the undersigned left a message informing her that this was the date and time for a PHC, and that the call would be re-initiated in 10 minutes. The ALJ then telephoned Attorney Patrick D. Frost on behalf of San Diego. He informed the undersigned that he was not assigned to this matter but would investigate the status and ensure that counsel was available for the PHC.

The undersigned left a second message for Ms. Cromer informing her that the PHC would be re-initiated at 10:30 a.m. At 10:30 a.m., the undersigned left a third message for Student's counsel informing her that the ALJ would initiate a telephonic appearance with San Diego in Student's absence and that an order would follow.

The ALJ telephoned San Diego's counsel and was informed that Amy Bozone was the assigned attorney. Ms. Bozone indicated she was not aware of today's PHC date as she had informed her client of the need to continue the PHC and hearing dates in light of the re-scheduled mediation, and assumed this had happened. Additionally, it was Ms. Bozone's understanding that this matter had settled by way of a verbal agreement, that a final written settlement agreement had been sent to Ms. Cromer on July 10, 2014, but that San Diego had not yet received a copy of a signed agreement.

As a result of the conduct of counsel for the parties described above, no PHC has been held and the matter remains scheduled for due process hearing on July 22, 2014.

ORDER TO SHOW CAUSE

Applicable Law

Under the reauthorized Individuals with Disabilities Education Improvement Act (IDEA 2004), a due process hearing must be conducted and a decision rendered within 45 days following a 30-day resolution period, after receipt of the due process notice, in the absence of an extension. (Ed. Code §§ 56502, subd. (f), and 56505, subd. (f)(3).) Given the short time frames applicable to this case, it is critical that the parties follow orders issued by OAH and participate in advancing the matter to hearing.

Under certain circumstances, an administrative law judge presiding over a special education proceeding is authorized to shift expenses from one party to another, or to OAH. (Gov. Code, §§ 11405.80, 11455.30; Cal. Code. Regs., tit. 5, § 3088; see *Wyner ex rel. Wyner v. Manhattan Beach Unified School Dist.* (9th Cir. 2000) 223 F.3d 1026, 1029 ["Clearly, [California Code of Regulations] § 3088 allows a hearing officer to control the proceedings, similar to a trial judge."].) Only the ALJ presiding at the hearing may place expenses at issue. (Cal. Code. Regs., tit. 5, § 3088, subd. (b).)

Discussion

When a party files a complaint that party has a duty to either prosecute the case which includes disclosing his witnesses and documentary exhibits and otherwise prepare for hearing by attending the mandatory PHC, or timely seek a continuance of the PHC for good cause. Here, counsel for both parties elected to not file a PHC statement and did not otherwise timely seek a continuance of the PHC and hearing dates. Further, Student's counsel did not appear at the PHC. Counsels' failure to follow OAH orders is disruptive and resulted in OAH incurring costs for the ALJ's preparation for and convening the PHC when neither party was prepared to move forward with the PHC.

In light of the above, OAH issues this Order to Show Cause as to Why Sanctions Should not be Initiated (OSC). The parties are ordered to show cause why the above-captioned case should not be dismissed for Student's failure to participate, prosecute, or advance the case for hearing, and why they should not be required to pay OAH's costs to prepare for and convene the PHC as well as costs to issue this OSC. **The parties shall submit written responses to this OSC, including any supportive declarations, showing why sanctions should not be initiated, or costs shifted, no later than 5:00 p.m. on July 17, 2014, by facsimile transition to (916) 376-6319.** The parties shall serve a copy of the response upon each other by facsimile.

Student's response shall address why his attorney did not file a PHC statement; why counsel did not timely request a continuance, seek dismissal of his case, or submit verification that the matter had settled; why counsel did not appear for the PHC on July 14, 2014; and whether counsel intends to go forward to a hearing. San Diego's response shall address why San Diego failed to timely seek a continuance or file a PHC statement. Each party's written responses shall address why OAH should not order the parties to pay OAH's expenses for preparing for and attempting to conduct the July 14, 2014 PHC and issuing this OSC.

The order to show cause hearing and continued PHC shall take place telephonically at 3:00 p.m. on July 18, 2014. If this case has not settled, and is not dismissed by OAH, the parties shall file PHC statements by July 17, 2014. OAH will initiate the telephone call to the parties. The parties shall be prepared to discuss the status of the case and whether Student's complaint should be dismissed. The hearing date of July 22, 2014, shall remain on calendar. **The mediation calendared for July 15, 2014, is hereby vacated.** Should the parties fail, without excuse, to timely file a response and PHC statement as ordered above, or participate in the telephonic status conference and PHC, OAH may impose sanctions and dismiss this case without further notice.

ORDER

1. An Order to Show Cause as to Why the Matter Should Not be Dismissed and the Parties Ordered to Pay Expenses is hereby issued. If this case has not settled and is not dismissed by OAH, each party shall file a response and PHC statement no later than 5:00 p.m., on July 17, 2014.

2. The parties shall appear for a telephonic OSC hearing and PHC at 3:00 p.m., on July 18, 2014.

3. Should the parties fail, without excuse, to timely file a response and PHC statement as ordered above, or participate in the telephonic status conference and PHC, OAH may impose sanctions and dismiss this case without further notice.

4. The mediation date of July 15, 2014, is cancelled.

5. The hearing date of July 22, 2014, is confirmed.

DATE: July 14, 2014

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings