

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FULLERTON SCHOOL DISTRICT.

OAH Case No. 2014020217

ORDER RE DISMISSAL WITHOUT
PREJUDICE

On August 1, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge Peter Paul Castillo, Office of Administrative Hearings. Ricardo Silva, Attorney at Law, appeared on behalf of Fullerton School District (Fullerton Elementary). ALJ Castillo attempted to reach Student's Mother, who is representing Student, at approximately 3:00 p.m., 3:10 p.m., and 3:25 p.m. to participate in the PHC, and left her telephone messages to contact OAH. Mother did not attempt to contact OAH. The PHC was recorded.

On August 4, 2014, OAH issued an Order Following Prehearing Conference and Order to Show Cause. The August 4, 2014 Order to Show Cause gave Mother until 5:00 p.m. on August 6, 2014, to serve on opposing party and OAH a response why this matter should not be dismissed for failure to participate, prosecute or advance the matter, and a declaration under penalty of perjury why Mother did not submit a PHC statement or attend the August 1, 2014 PHC. OAH received no such response.

APPLICABLE LAW

The Individuals with Disabilities Education Act requires speedy resolution of complaints. Under the IDEA, parties must request a hearing within two years of the date they knew or should have known of the alleged wrongful action. (34 C.F.R. § 300.511(e) (2006)¹.) The parties must be given an opportunity for an impartial due process hearing. (34 C.F.R. § 300.511(a).) Subject to the 30 day stay after the complaint, or amended complaint if filed, and continuances based upon good cause, a final decision must be reached and mailed to the parties within forty-five days. (34 C.F.R. § 300.515).

Although it is always preferable to resolve actions on their merits (Cal. Civ. Proc. Code § 583.130.), dismissal without prejudice is warranted where, among other things, a party fails to proceed with due diligence.

¹ All subsequent references to the Code of Federal Regulations are to the 2006 version.

DISCUSSION

Student has failed to diligently participate in, prosecute, or advance his complaint. On February 5, 2014, Student filed a complaint, naming the Fullerton Elementary and Fullerton Joint Union High School District (Fullerton High School). On March 26, 2014, Student's counsel withdrew. As a result of the withdrawal of Student's counsel, Mother is representing Student. The attorney's notice of withdrawal did not direct OAH to send all future documents to Mother at an address different than the address set forth in Student's complaint. Mother negotiated a settlement with Fullerton High School on April 29, 2014, which its Board adopted on May 19, 2014. However, Mother did not dismiss Fullerton High School, as called for in the settlement agreement, which led Fullerton High School to file a formal motion to dismiss. OAH granted that motion to dismiss on June 30, 2014.

On June 17, 2014, Mother and Fullerton Elementary moved for a continuance of the hearing. OAH initially denied the request on June 20, 2014. Upon Fullerton Elementary's motion for reconsideration, OAH granted the continuance on June 26, 2014, with the current dates for the PHC and hearing, and served Mother with a copy of the order.

On July 30, 2014, Fullerton Elementary filed and served Student its PHC statement. Fullerton Elementary's PHC statement set forth the date and time of the PHC. Student did not file a PHC statement. On August 1, 2014, ALJ Castillo convened the telephonic PHC. He called Mother's phone number three times and left voice mail messages for her, advising her of the PHC, providing her with the OAH phone number so that she could contact the ALJ regarding the PHC. At the PHC, the ALJ continued the telephonic PHC to August 8, 2014, at 1:00 p.m. to allow Mother more time to submit a PHC statement and explain to OAH her failure to prosecute this action. On August 4, 2014, OAH served Mother via overnight mail the Order to Show cause and timeline for the submission of documents, and penalty of dismissal for failing to comply.

For the above reasons, the ALJ orders the above captioned action dismissed without prejudice, for failure of Student to participate in, prosecute, or advance the matter. All dates are vacated.

IT IS SO ORDERED.

DATE: August 7, 2014

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings