

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LINCOLN UNIFIED SCHOOL DISTRICT.

OAH Case No. 2014071052

ORDER TO SHOW CAUSE WHY
MATTER SHOULD NOT BE
DISMISSED FOR FAILURE TO
PROSECUTE

On July 23, 2014, Student filed a due process hearing complaint naming Lincoln Unified School District. A scheduling order was issued on July 29, 2014. On August 29, 2014, the matter was continued and the prehearing conference was scheduled for November 21, 2014 at 10:00 a.m. Student did not file a prehearing conference statement as required in the scheduling order. At 10:00 a.m. on November 21, 2014, the prehearing conference was convened by Administrative Law Judge Charles Marson. Student exercised his peremptory challenge and the prehearing conference was assigned to ALJ Margaret Broussard and rescheduled for 1:00 p.m.

Parent, who holds Student's educational rights and represents Student in this matter, did not answer his telephone at 1:00 p.m., 1:05 p.m. and 1:30 p.m. and the voicemail box was full. Parent did not contact OAH and ask for a continuance of the PHC. Student failed to file a prehearing conference statement and failed to appear at the PHC. Student did not ask for a continuance nor was any continuance granted. Student will therefore be ordered to show cause, if he has cause, why this matter should not be dismissed with prejudice for failure to prosecute.

Student's failure to file a prehearing conference statement and to participate in the prehearing conference suggests that Student does not intend to proceed to hearing. While Parent has been unavailable to OAH, he should be given the opportunity to establish if Student intends to go forward with this case. Accordingly, an Order to Show Cause is hereby issued as to why this matter should not be dismissed.

ORDER TO SHOW CAUSE

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 Student or his representative follow orders issued by OAH and participate in advancing the matter to hearing.

Student is ordered to show cause why the above captioned case should not be dismissed for his failure to participate, prosecute or advance the case for hearing. **Parent, or a representative for Student, is ordered to file a written response with OAH by not later than 5:00 p.m. on December 1, 2014,** by facsimile transmission to (916) 376-6319. Student shall serve a copy of the response on counsel for District. Student's response shall address why his representative did not appear for the prehearing conference on November 21, 2014, and whether he intends to go forward to a hearing, and include a telephone number for the telephonic prehearing conference ordered below. If Student intends to proceed to hearing, Student shall file a prehearing conference statement no later than 5:00 p.m. on December 1, 2014.

A prehearing conference shall take place at 1:00 p.m. on Friday, December 5, 2014. OAH shall 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 December 2, 2014 is hereby vacated and the hearing is reset for December 9 and 10, 2014.**

Should Student, Parent or a representative fail, without excuse, to timely file a response as ordered above, or to timely file the prehearing conference statement as ordered above, or participate in the telephonic prehearing conference, OAH may dismiss this case without further notice. If Student files a response which establishes good cause why Parent or a representative did not appear for the above telephonic conference, and that Student intends to proceed to hearing, the matter shall proceed forward. If Student fails to show good cause in his response, OAH will dismiss Student's complaint. If Student has abandoned the case and no longer wishes to pursue it, he shall file a notice of withdrawal with OAH.

ORDER

1. An Order to Show Cause as to Why the Matter Should Not Be Dismissed is hereby issued. Parent must file a written response no later than 5:00 p.m. on December 1, 2014, or the matter may be dismissed. The response must also be served upon counsel for Lincoln Unified School District.

2. If Student intends to proceed, Student must file a prehearing conference statement by 5:00 p.m. on December 1, 2014. This prehearing conference statement must be timely served upon counsel for Lincoln Unified School District. The prehearing conference has been set for 1:00 p.m. on December 5, 2014.
3. The hearing date of December 2, 2014, is vacated. The hearing has been reset for December 9 and 10, 2014.

IT IS SO ORDERED.

DATE: November 24, 2014

/s/

MARGARET BROUSSARD
Administrative Law Judge
Office of Administrative Hearings