

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

v.

MONTEBELLO UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015050560

ORDER TO SHOW CAUSE RE:
DISMISSAL FOR FAILURE TO
PROSECUTE, SETTING ORDER TO
SHOW CAUSE HEARING

On April 30, 2015, attorney Hans Gillinger, on behalf of Student, filed a request for an expedited due process hearing naming Montebello Unified School District. On May 19, 2015, the Office of Administrative Hearings issued an Order granting Student's request to withdraw the expedited portion of Student's complaint. On June 3, 2015, Student's attorney filed a request to cancel the June 4, 2015 mediation. On June 5, 2015, OAH granted the parties' joint request to continue the mediation to June 18, 2015, the prehearing conference to July 27, 2015, and the hearing to August 3 – 6, 2015; Mr. Gillinger signed the stipulation on behalf of Student.

On June 12, 2015, OAH left a voicemail message with Mr. Gillinger, asking him to confirm the June 18, 2015, mediation. Having not heard from Mr. Gillinger, OAH again telephoned and left a message for Mr. Gillinger on June 16, 2015, asking him to contact OAH and confirm the mediation. OAH did not hear from Mr. Gillinger.

District's attorney Carlos Gonzalez confirmed the mediation. OAH assigned Administrative Law Judge Judy Pasewark to the June 18, 2015 mediation. ALJ Pasewark prepared for the mediation and travelled to the District's offices for the mediation. Mr. Gonzalez, a District representative, and Student appeared; Mr. Gillinger did not. The mediation was cancelled.

At about 3:25 p.m., June 18, 2015, Mr. Gillinger telephoned OAH and said his calendar did not reflect the mediation, which he had just realized before calling. Mr. Gillinger said he would contact opposing counsel to arrange for a new mediation date. Mr. Gillinger did not thereafter contact OAH.

Pursuant to OAH's scheduling order, the parties were required to file prehearing conference statements three (3) business days prior to the PHC. Here, the PHC statements were due no later than the close of business on July 22, 2015. Mr. Gonzales timely filed District's PHC statement. Mr. Gillinger did not file a PHC statement on behalf of Student.

ALJ Clifford H. Woosley telephoned Student's attorney, Mr. Gillinger, at 1:00 pm, July 27, 2015, to convene the scheduled prehearing conference. OAH has only one phone number for Mr. Gillinger, which is the same number listed with the State Bar. The call directly connected to Mr. Gillinger's voicemail. ALJ Woosley left a message, stating the purpose of the call and indicating that he would call back in 15 minutes to convene the PHC. ALJ Woosley informed Mr. Gonzalez, who was available, that the PHC would be continued for 15 minutes to give Mr. Gillinger an opportunity to be present.

At 1:15 pm, July 27, 2015, ALJ Woosley called Mr. Gillinger and was again directly transferred to voicemail. ALJ Woosley left a second voicemail, indicating that the PHC would proceed with the District's attorney. ALJ Woosley further informed Mr. Gillinger that an Order to Show Cause would issue, setting a telephonic conference date to determine why this matter should not be dismissed because of Student's failure to prosecute.

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's counsel has not diligently pursued this matter by failing to appear at the scheduled mediation and the prehearing conference, as well as failing to file a PHC statement. Further, Student's counsel has not responded to OAH's multiple inquiries regarding the status of an impending mediation. Student is ordered to show cause at a telephonic hearing set for **July 31, 2015 at 10:00 a.m.** as to why this matter should not be dismissed for lack of prosecution. Counsel for all parties shall appear at the OSC hearing. If Student does not appear at the OSC hearing, the matter will be dismissed. If Mr. Gillinger appears and the matter is not dismissed, the matter will proceed to a prehearing conference on September 11, 2015, at 10:00 a.m., as indicated in the July 27, 2015 Order Following Prehearing Conference, continuing PHC and hearing.

IT IS SO ORDERED.

DATE: July 28, 2015

/s/

CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings