

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

KONOCTI UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021090274

ORDER FOLLOWING PREHEARING CONFERENCE FOR
HEARING BY VIDEOCONFERENCE; GRANTING KONOCTI'S

MOTION TO DISMISS WITHOUT PREJUDICE

OCTOBER 18, 2021

On October 18, 2021, Administrative Law Judge Cararea Lucier, Office of Administrative Hearings, held a prehearing conference by videoconference. The Administrative Law Judge is called an ALJ. The Office of Administrative Hearings is called OAH. The prehearing conference is called a PHC.

Parent appeared on behalf of Student. Damara Moore, Attorney at Law, appeared on behalf of Konocti. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

KONOCTI'S MOTION TO DISMISS WITHOUT PREJUDICE

At the prehearing conference, Konocti moved to dismiss Student's complaint without prejudice. Konocti argued that it was prejudiced because Student failed to file a prehearing conference statement. Further, Konocti alleged that Parent failed to articulate a remedy within OAH's jurisdiction. Konocti contended that Student's issues were impermissibly vague, and that many of the issues were not cognizable claims under the Individuals with Disabilities Education Act and California Education Code. Parent opposed Konocti's motion to dismiss. Parent contended that she could not provide answers or comments at the prehearing conference and alleged that she felt she was being treated unfairly.

On September 7, 2021, Parent filed a request for due process hearing through her counsel, who drafted the complaint. Parent's counsel subsequently withdrew and Parent chose to continue representing Student in the due process hearing. However, Parent did not comply with OAH's scheduling order requiring the parties to timely submit prehearing conference statements. At the prehearing conference, Parent's participation was limited to statements that she would not answer, could not comment, or did not understand. Parent was unable to provide basic information related to the proposed issues, such as the services she was alleging Student required, and whether Student had a behavior plan for the time at issue. Parent disavowed all proposed remedies her counsel had requested in the complaint. Parent declined assistance from an OAH mediator.

Konocti's motion to dismiss without prejudice is granted. The intent of the IDEA and the Education Code is consistent with the general policy of this state that plaintiffs prosecute actions with reasonable diligence. (Code Civ. Proc., § 583.130.) Civil actions may be dismissed for delay in prosecution. (Code Civ. Proc., § 583.410, subd. (a)).

Dismissal without prejudice is warranted where, as here, Student has failed to diligently proceed with the Complaint. When Student is ready to proceed with his claim, Student may file another complaint on the same claim, as long as such complaint is filed within two years of Konocti's action which is the subject of the new complaint.

A parent who is not represented by an attorney may request that OAH provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint. (Ed. Code, § 56505.) The mediator may not provide legal advice but may assist parents to ensure compliance with requirements in order to proceed with mediation and due process. Additionally, a parent who is not represented by an attorney is encouraged to visit the Special Education Section of the Office of Administrative Hearings Website at: <http://www.dgs.ca.gov/OAH/Case-Types/Special-Education>. The website contains a published guide that provides information related to due process hearings.

Based upon the foregoing, this matter is dismissed without prejudice, for failure of Student to prosecute the Complaint with reasonable diligence.

IT IS SO ORDERED.

Cararea Lucier

Cararea Lucier

Administrative Law Judge

Office of Administrative Hearings