

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

ROCKLIN UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021080799

ORDER TO SHOW CAUSE RE DISMISSAL AND ORDER
CONTINUING THE PREHEARING CONFERENCE AND DUE
PROCESS HEARING

NOVEMBER 5, 2021

On November 5, 2021, Administrative Law Judge Laurie Gorsline, Office of Administrative Hearings, joined the online videoconference to convene the prehearing conference. The Administrative Law Judge is called an ALJ. The Office of Administrative Hearings is called OAH. The prehearing conference is called a PHC.

There was no appearance by counsel for Student or Rocklin Unified School District. Accordingly, the ALJ issues the following order:

ORDER TO SHOW CAUSE RE DISMISSAL

On August 26, 2021, Student filed a Request for Due Process Hearing with OAH, naming Rocklin Unified School District. On October 1, 2021, OAH granted the parties' joint request for mediation and a continuance, continuing the PHC to November 5, 2021 at 1:00 PM, and hearing to November 16 through 18, 2021.

On November 5, 2021, the ALJ attempted to convene the PHC at 1:00 PM by videoconference. The ALJ waited in the online videoconference until 1:37 PM, but neither party nor their counsel appeared at the PHC.

An Order to Show Cause re Dismissal is set for November 12, 2021 at 1:00 PM. Unless a request for dismissal is filed by Student prior to November 12, 2021 at 1:00 PM, the parties are ordered to appear by videoconference or telephonically on November 12, 2021 at 1:00 PM and show cause why this matter should not be dismissed and why sanctions should not be imposed against both parties and their counsel for their failure to appear at the November 5, 2021 PHC.

If Student does not appear at the Order to Show Cause hearing on November 12, 2021 at 1:00 PM, Student's Request for Due Process Hearing will be considered abandoned and will be dismissed for failure to prosecute, unless otherwise ordered.

If good cause is shown why this matter should not be dismissed, the PHC will immediately follow the Order to Show Cause hearing as set forth below.

HEARING DATES, TIMES, AND LOCATION

DUE PROCESS HEARING

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances are disfavored. Good cause may include the unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances; substitution of an attorney when the substitution is required in the interests of justice; a party's excused inability to obtain essential testimony or other material evidence despite diligent efforts; or another significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. (Ed. Code, § 56505, subd. (f)(3); Cal. Rules of Court, rule 3.1332(c).) OAH considers all relevant facts and circumstances, including the proximity of the hearing date; previous continuances or delays; the length of continuance requested; the availability of other means to address the problem giving rise to the request; prejudice to a party or witness as a result of a continuance; the impact of granting a continuance on other pending hearings; whether trial counsel is engaged in another trial; whether the parties have stipulated to a continuance; whether the interests of justice are served by the continuance or imposing conditions on the continuance; and any other relevant fact or circumstance. (Cal. Rules of Court, rule 3.1332(d).)

The ALJ reviewed the file for good cause, considered all relevant facts and circumstances, and determined that there was good cause for a short continuance of the hearing given the parties' failure to appear at the PHC and the scheduling of the Order to Show Cause re Dismissal for November 12, 2021. All dates are vacated, and the matter is continued as follows, unless otherwise ordered:

PREHEARING CONFERENCE will be held on November 12, 2021 at 1:00 PM.

DUE PROCESS HEARING will be held on November 23 and November 24, 2021.

PARTICIPANT INFORMATION SHEETS FOR MEDIATION AND PREHEARING CONFERENCES MUST BE FILED TWO BUSINESS DAYS PRIOR TO THE DATE OF THE SCHEDULED EVENT.

ANY CHANGES TO THE PARTICIPANTS' EMAIL ADDRESSES PROVIDED BY THE PARTIES IN THEIR REQUEST MUST BE FILED TWO BUSINESS DAYS BEFORE THE SCHEDULED EVENT.

The hearing shall begin at 9:30 AM on all days unless otherwise ordered. The hearing shall continue day to day, as needed at the discretion of the Administrative Law Judge. Prehearing conference statements and motions are due to OAH no later than three business days before the PHC, or with a showing of good cause why it was not possible to file the motion by that date.

HEARING LOCATION

OAH is authorized to conduct due process hearings by videoconference or telephone. (Cal. Code Regs., tit. 5, § 3082, subd. (g).) Based on state and federal guidance to address safety procedures due to the novel coronavirus, COVID-19, OAH will conduct the due process hearing by videoconference using the Microsoft Teams application. Unless otherwise ordered, participants are required to appear by videoconference using a webcam and Microsoft Teams.

The parties shall immediately notify all potential witnesses of the hearing dates and shall subpoena witnesses, if necessary, to ensure that the witnesses will appear to testify. A party's failure to notify or subpoena a witness to testify will not be considered

good cause to continue the hearing. Instructions for issuing and responding to subpoenas and optional forms for subpoenas can be found on the website at <https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Forms/Subpoenas?search=special%20education%20subpoena>.

SETTLEMENT

The parties are encouraged to continue working together to reach an agreement before the due process hearing. The parties shall inform OAH in writing immediately if they reach a settlement or otherwise resolve the dispute before the scheduled hearing. In addition, if a settlement is reached within five days of the scheduled start of the due process hearing, the parties shall also inform OAH of the settlement by telephone at (916) 263-0880. At the same time, the parties should send the signature page of the signed agreement or a letter withdrawing the case to OAH at <https://www.applications.dgs.ca.gov/oah/oahsftweb>.

If a full and final written settlement agreement is reached after 4:00 PM the day prior to hearing, the parties shall leave a voicemail message regarding the settlement at (916) 274-6035. The parties should also leave contact information such as cellular phone numbers of each party or counsel for each party.

Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received and processed by OAH. If an agreement in principle is reached, the parties should plan to attend the scheduled hearing unless different arrangements have been agreed upon by the assigned ALJ. The assigned ALJ will check for messages before the hearing.

If the matter settles subject to board approval, in addition to a signed copy of the signature page of the settlement agreement, the parties shall provide the date of the next board meeting. The hearing dates will not be cancelled without this information.

FAILURE TO COMPLY

The failure to comply with this Order may result in dismissal, the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

Laurie Gorsline

Laurie Gorsline

Administrative Law Judge

Office of Administrative Hearings