

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

SAN MARCOS UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021120803

ORDER FOLLOWING PREHEARING CONFERENCE, SETTING
HEARING ON ORDER TO SHOW CAUSE, AND
CONTINUING PREHEARING CONFERENCE AND HEARING
BY VIDEOCONFERENCE

MARCH 14, 2022

On March 14, 2022, Administrative Law Judge Christine Arden, 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.

Constance Zarkowski, Attorney at Law, appeared on behalf of Student. Madisyn Ukrainetz and Taylor Needham, Attorneys at Law, appeared on behalf of San Marcos

Unified School District. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

ORDER TO SHOW CAUSE AND CONTINUANCE OF PREHEARING CONFERENCE AND DUE PROCESS HEARING

The last PHC was held in this matter on February 25, 2022 before ALJ Defillippis. On February 22, 2022, Student filed with OAH a PHC Statement which set forth issues inconsistent with the issues and facts alleged in Student's complaint in this case. At the February 25, 2022 PHC counsel for San Marcos Unified School District protested on the record that it was prejudiced by Student's failure to accurately present Student's issues in Student's PHC statement. ALJ Defillippis also stated on the record at the February 25, 2022 PHC that the issues stated in Student's PHC statement were confusing because they were inconsistent with the issues and facts alleged in the complaint.

On February 25, 2022, ALJ Defillippis granted San Marcos Unified School District's motion to continue the hearing, and continued the PHC to March 14, 2022 at 1:00 PM, and the hearing to March 22, 23, and 24, 2022. ALJ Defillippis further ordered Student to timely file a new PHC statement accurately stating the issues alleged in the complaint in this case, at least three business days before the PHC set for March 14, 2022. Student did not comply with that Order and failed to file a new PHC statement accurately stating the issues in this case before the March 14, 2022 PHC.

It is critical the parties follow orders issued by OAH and participate in advancing the matter to hearing or resolution. The Scheduling Order issued to the parties in this case on December 27, 2021, ordered the parties to include in their prehearing conference statements a "concise statement of the issues raised in the due process hearing request that remain to be decided at the due process hearing" Student

failed to do that. Student's non-compliance with OAH's procedures caused OAH to incur unnecessary expenses. All parties are responsible for understanding and following OAH's procedures. Failure to do so may result in the complaint being dismissed, or in OAH's costs being shifted to the noncomplying party.

Because Student failed to comply with ALJ Defillipis' order and timely file a new corrected PHC statement, accurately setting forth the issues alleged in the complaint before the March 14, 2022 PHC, the ALJ set a hearing on an Order to Show Cause why: (1) Student's complaint should not be dismissed for Student's failure to participate, prosecute and/or advance this matter, or (2) Student should not be ordered to pay OAH's costs incurred in connection with the March 14, 2022 PHC.

Student is ordered to file with OAH a written statement under penalty of perjury with OAH no later than 5:00 PM on March 15, 2022, explaining (1) Student's failure to file a PHC Statement prior to the PHCs held on February 22, 2022, and March 14, 2022, which included a concise and accurate statement of the issues alleged in Student's complaint; (2) why Student's complaint should not be dismissed; and (3) why OAH's costs incurred in connection with the March 14, 2022 PHC should not be shifted to Student for payment. San Marcos Unified School District may file a response to Student's statement filed in opposition to the Order to Show Cause to by 5:00 PM on March 16, 2022. San Marcos Unified School District's opposition should also be made under penalty of perjury.

San Marcos Unified School District may file with OAH no later than 5:00 PM on March 15, 2022, a motion to shift to Student the costs San Marcos Unified School District incurred in connection with appearing at the PHC held on March 14, 2022. Student's opposition to that motion shall be filed with OAH no later than 5:00 PM on March 16, 2022.

The hearing on the Order to Show Cause described above shall be held on March 21, 2022, at 1:00 PM. If this case is not dismissed at that hearing on the Order to Show Cause, the PHC will take place immediately following such hearing, and the hearing will take place on March 29, 2022, and March 30, 2022, beginning at 9:30 AM each day. The parties shall immediately give witnesses notice of those hearing dates and subpoena witnesses if necessary.

ORDER

1. Student shall file with OAH a written statement under penalty of perjury no later than 5:00 PM on March 15, 2022, explaining: (1) Student's failure to file a PHC Statement in this matter prior to the PHCs held on February 22, 2022, and March 14, 2022, which accurately addressed the issues alleged in Student's complaint; and (2) why Student's complaint should not be dismissed, and (3) why OAH's costs incurred in connection with the March 14, 2022 PHC should not be shifted to Student for payment. San Marcos Unified School District may file a response to Student's statement no later than 5:00 PM on March 16, 2022. San Marcos Unified School District's response must be made under penalty of perjury.
2. The PHC is continued until after the Order to Show Cause is addressed at a hearing on March 21, 2022, at 1:00 PM. If this case is not dismissed at that hearing, the PHC will take place immediately following the hearing. The current hearing dates are vacated and the matter is now scheduled as follows:
 - a. prehearing conference is set for Monday, March 21, 2022, at 1:00 PM; and
 - b. due process hearing is set for March 29, 2022, through March 30, 2022, beginning at 9:30 AM each day.

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.

3. Student shall file with OAH a new corrected PHC Statement, which includes an accurate and concise statement of issues consistent with the allegations made in the complaint, at least three business days before the March 21, 2022, 1:00 PM PHC. Student should not merely copy the contents of the complaint into Student's new corrected PHC statement, but should concisely state the issues to be decided at the due process hearing.
4. San Marcos Unified School District may file with OAH no later than 5:00 PM on March 15, 2022, a motion to shift to Student the costs San Marcos Unified School District incurred in appearing at the PHC on March 14, 2022. Student's opposition to that motion shall be filed with OAH no later than 5:00 PM on March 16, 2022. If San Marcos Unified School District files a motion to shift to Student its costs for appearing at the March 14, 2022 PHC, that motion will be addressed at the PHC on March 21, 2022 at 1:00 PM.

IT IS SO ORDERED.

Christine Arden

Christine Arden

Administrative Law Judge

Office of Administrative Hearings