

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

SAN DIEGO UNIFIED SCHOOL DISTRICT.
OAH CASE NUMBER 2023070984

ORDER OF DISMISSAL FOLLOWING ORDER TO SHOW
CAUSE

JANUARY 12, 2024

On January 12, 2024, Administrative Law Judge Clifford H. Woosley, Office of Administrative Hearings, held a videoconference hearing on an Order to Show Cause re Dismissal, issued January 5, 2024.

The Administrative Law Judge is called an ALJ. The Office of Administrative Hearings is called OAH. The Order to Show Cause is called an OSC and a prehearing conference is called a PHC.

Parent appeared on behalf of Student. Attorney Nicholas Felahi appeared on behalf of San Diego Unified School District. Royal Lord, Program Specialist for San Diego Unified, was also present. The OSC was recorded.

THE ORDER TO SHOW CAUSE RE DISMISSAL

On July 31, 2023, Student filed a Request for Due Process Hearing with OAH, naming San Diego Unified School District. On August 24, 2023, OAH granted the parties' joint request and continued the PHC to October 30, 2023, and the hearing to November 7 through 9, 2023.

On October 25, 2023, Student's attorney filed a notice withdrawing as counsel for Student. Parent appeared for Student at the PHC held on October 30, 2023, along with counsel for San Diego Unified. OAH granted Student's request for a continuance based on the attorney's withdrawal and Parent's desire to obtain new counsel. Parent and San Diego Unified discussed and agreed upon dates for continuance. OAH continued the PHC for more than two months, to January 5, 2024, at 1:00 PM, and the due process hearing to January 17 and 18, 2024.

On January 5, 2024, before 10:00 AM, Parent informed OAH by telephone she had not received any information and was being forced to attend this PHC hearing. Parent stated she was not available and would not attend. Parent filed no written request or motion with OAH. OAH staff left a message for Parent that the PHC would proceed as scheduled at 1:00 PM.

On January 5, 2024, ALJ Laurie Gorsline convened the PHC at 1:00 PM. No one appeared on Student's behalf. OAH did not receive a PHC statement on behalf of Student. The ALJ therefore issued an Order to Show Cause re Dismissal for January 12, 2024, at 1:00 PM. The OSC directed Parent or Student's representative to appear by videoconference or telephonically and show cause why this matter should not be dismissed for the failure to appear at the January 5, 2024 PHC. Parent was also directed to file a PHC statement, if Parent intended on pursuing the matter.

APPLICABLE LAW

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).)

DISCUSSION

At the January 12, 2024 hearing on the OSC, Parent said she had been unable to retain an attorney over the previous two months because of health issues and personal commitments. Parent stated they had an attorney reviewing documents. However, the attorney had not agreed to represent Student. Parent generally acknowledged that Parent had not been able to pursue the matter.

Parent said that the statute of limitations had not yet run on the issue contained in Student's complaint. If the matter is dismissed, Parent stated she would have the time to retain an attorney and refile. Attorney Felahi acknowledged, on behalf of San Diego Unified, that the statute of limitations had not yet expired on the complaint's issue.

Student did not file PHC statements for the October 2023 PHC and the January 5, 2024 PHC. Parent did not file a PHC statement for the January 12, 2024 hearing, though directed to do so by the January 5, 2024 OSC. Parent did not appear on behalf of the Student at the 1:00 PM, January 5, 2024 PHC, even though Parent agreed to this continued time and date, at the October 30, 2023 PHC.

Student has not diligently pursued this matter and the case shall be dismissed.
The ALJ counseled Parent to not delay in retaining counsel if Parent intended to pursue the claim on behalf of Student.

ORDER

All previously scheduled dates in this matter are vacated and Student's case is dismissed.

A handwritten signature in blue ink, appearing to read "Clifford H. Woosley". The signature is stylized with a large initial "C" and a long, sweeping underline.

Clifford H. Woosley

Administrative Law Judge

Office of Administrative Hearings