

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENT ON BEHALF OF STUDENT,

v.

SAN DIEGO UNIFIED SCHOOL DISTRICT.
OAH CASE NUMBER 2023070984

ORDER TO SHOW CAUSE RE DISMISSAL, ORDER
FOLLOWING PREHEARING CONFERENCE FOR HEARING BY
VIDEOCONFERENCE AND CONTINUING THE PREHEARING
CONFERENCE AND DUE PROCESS HEARING

JANUARY 5, 2024

On January 5, 2024, Administrative Law Judge Laurie Gorsline, 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.

Nicholas Felahi, Attorney at Law, appeared on behalf of San Diego Unified School District. Royal Lord, Program Specialist for San Diego Unified, was also present. No one

appeared on behalf of Student. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

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 for continuance of 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. OAH continued the PHC 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 hearing. Parent stated she was not available and would not attend. Parent also informed OAH she had a doctor's appointment and asked that the PHC be moved to later in the afternoon on January 5, 2024. Parent filed no written request or motion with OAH. Prior to 12:25 PM, OAH staff left a message for Parent that the PHC would proceed as scheduled at 1:00 PM.

On January 5, 2024, the ALJ convened the PHC at 1:00 PM. Because no one appeared on Student's behalf, the PHC proceeded with counsel for San Diego Unified and its representative at 1:05 PM.

During the PHC, the ALJ set an Order to Show Cause re Dismissal for January 12, 2024, at 1:00 PM. Unless Student files a request for dismissal of the case prior to January 12, 2024, at 1:00 PM, Parent or Student's representative is ordered to appear by videoconference or telephonically on January 12, 2024, at 1:00 PM and show cause why this matter should not be dismissed for the failure to appear at the January 5, 2024 PHC.

If no one appears on behalf of Student at the Order to Show Cause hearing on January 12, 2024, at 1:00 PM, Student's Request for Due Process Hearing will be considered abandoned and this case will be dismissed for failure to prosecute, unless otherwise ordered.

HEARING DATES, TIMES, AND LOCATION

DUE PROCESS HEARING

OAH must conduct a due process hearing and issue a decision within 45 days of receiving the due process complaint, unless an extension is granted. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Resolving the due process hearing quickly is legally required. Hearings may only be continued if "good cause" is established. (Ed. Code, § 56505, subd. (f)(3).) OAH is guided by the Administrative Procedure Act and the California Rules of Court when ruling on continuance motions. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, rule 3.1332.) Generally, continuances are disfavored. (Cal. Rules of Court, rule 3.1332(c).)

Because there was no appearance for Student at the PHC on January 5, 2024, and an Order to Show Cause Re Dismissal has been scheduled for January 12, 2024, at 1:00 PM, there is good cause to continue the PHC and hearing. The PHC and hearing are continued as follows:

PREHEARING CONFERENCE will be held on January 12, 2024, at 1:00 PM unless the matter has been dismissed.

DUE PROCESS HEARING will be held on January 23 through 24, 2024, and continue day to day at the discretion of the ALJ.

The PHC and due process hearing will be held by videoconference or telephone, unless otherwise ordered. The due process hearing will begin at 9:30 AM on all days, and generally end at 3:30 PM, unless otherwise ordered. The hearing will continue day to day, as needed, Mondays and Fridays included, at the discretion of the Administrative Law Judge.

PHC statements and motions are due to OAH no later than three business days before the PHC. Late motions will only be considered if good cause is established for the late filing.

The parties must immediately give potential witnesses the hearing dates, and must subpoena witnesses, if necessary, so they are available to testify. Failing to properly notify or subpoena a witness is not good cause to delay the hearing. 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>.

PARTICIPANT INFORMATION SHEETS FOR THE PHC AND HEARING 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 MUST BE FILED TWO BUSINESS DAYS BEFORE THE SCHEDULED EVENT.

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 by visiting [OAH Secure e-file](https://www.applications.dgs.ca.gov/oah/oahsftweb) 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.

ORDER INCLUDES ALL RULINGS

This Order includes all rulings made at the prehearing conference. Any discussion and conversation not referenced in this Order is not binding on the ALJ conducting the hearing and may not be relied upon by the parties. The parties should be aware that, at hearing, the ALJ conducting the hearing has discretion to reconsider any part of this Order.

IT IS SO ORDERED.

Laurie Gorsline

Laurie Gorsline

Administrative Law Judge

Office of Administrative Hearings