

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023110649

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

JANUARY 12, 2024

On January 12, 2024, Administrative Law Judge Thanayi Lindsey, 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.

Shawn Olson Brown, Attorney at Law, appeared on behalf of West Contra Costa Unified School District. No one appeared on behalf of Student. The PHC was recorded.

Based upon discussion with the West Contra Costa Unified School District's attorney, the ALJ issues the following order:

ORDER TO SHOW CAUSE RE DISMISSAL

On November 20, 2023, Student filed a Request for Due Process Hearing with OAH, naming West Contra Costa Unified School District. On December 28, 2023, OAH granted West Contra Costa Unified School District's request for continuance of the prehearing conference to January 12, 2024, at 10:00 am, and the due process hearing to January 23 through January 25, 2024.

On January 11, 2024, the Zoom invitations were sent electronically using each attorney's email address included in the prehearing conference statements.

On January 11, 2024, the ALJ convened the PHC at 10:00 AM. Because no one appeared on Student's behalf, at 10:08 AM, the ALJ sent a message to the case manager to contact Student's attorney. The case manager did not reach a live person. At approximately 10:15 AM, the ALJ resent the Zoom invitation to Student's attorney. At 10:21 AM, the ALJ called Student's attorney at their office number and left a detailed voicemail message. The ALJ waited until 10:30 AM for Student's attorney to respond to the messages or appear at the PHC. Since no one appeared on behalf of Student, the PHC proceeded with counsel for West Contra Costa Unified School. The PHC concluded at approximately 10:34 AM. The ALJ received a Zoom notification via email that Student's attorney logged into the Zoom meeting at 12:16 PM.

During the PHC, the ALJ set an Order to Show Cause re Dismissal for January 19, 2024, at 1:00 PM. Unless Student files a request for dismissal of the case prior to January 19, 2024, at 1:00 PM, Student's representative is ordered to appear by videoconference or telephonically on January 19, 2024, at 1:00 PM and show cause why

this matter should not be dismissed for the failure to appear at the January 12, 2024
PHC.

If no one appears on behalf of Student at the Order to Show Cause hearing on
January 19, 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 12, 2024,
and an Order to Show Cause Re Dismissal has been scheduled for January 19, 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 19, 2024, at 1:00 PM unless
the matter has been dismissed.

DUE PROCESS HEARING will be held on January 30 through February 1, 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.

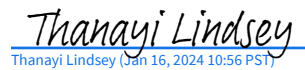
FAILURE TO COMPLY

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.


Thanayi Lindsey (Jan 16, 2024 10:56 PST)

Thanayi Lindsey

Administrative Law Judge

Office of Administrative Hearings