

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENT ON BEHALF OF STUDENT,

v.

SAN RAFAEL CITY SCHOOLS.
OAH CASE NUMBER 2023110786

ORDER TO SHOW CAUSE AS TO WHY MATTER SHOULD
NOT BE DISMISSED FOR FAILURE TO APPEAR AT
PREHEARING CONFERENCE, OR FILE A REQUEST FOR
DISMISSAL; CONTINUING PREHEARING CONFERENCE
AND DUE PROCESS HEARING

JANUARY 22, 2024

On November 21, 2023, Student filed a request for due process hearing, referred to as a complaint, with the Office of Administrative Hearings, referred to as OAH, naming San Rafael City Schools.

On December 12, 2023, OAH issued an order granting the parties' joint request for a videoconference mediation and continuance. The mediation was set for January

10, 2024, which the parties attended. The prehearing conference, referred to as a PHC, was set for January 19, 2024, at 10:00 AM, and the hearing for January 30, 2024, through February 1, 2024.

On January 16, 2024, San Rafael filed a complaint, naming Student. San Rafael also filed a motion to consolidate San Rafael's case with Student's case. OAH did not rule on the motion to consolidate as the time for Student to file a response had not passed.

The undersigned ALJ held the PHC on January 19, 2024, at 10:00 AM. Student made no appearance at the PHC. Deborah Ettinger, Attorney at Law, appeared on behalf of San Rafael. Ms. Ettinger represented that the parties reached a settlement agreement, which did not require approval from San Rafael's school board, but which needed to be fully executed. Based upon a discussion on the record, the undersigned ALJ trailed the PHC to 2:30 PM, pending receipt of the signature pages of the agreement with a statement that the agreement did not require board approval and a request for dismissal of the matter on behalf of Student. OAH did not rule on the motion to consolidate as Student did not have an opportunity to state their position on the motion on the record.

Subsequently, before 2:30 PM, San Rafael filed a notice of settlement with OAH. The notice stated that the respective parties would file a request for dismissal with prejudice within two business days of full execution of the settlement agreement. The notice also stated that the settlement agreement did not require approval from San Rafael's school board. San Rafael filed a notice of dismissal of its own case.

OAH staff telephoned both parties requesting a dismissal on behalf of Student. Student has not filed a request for dismissal of their case.

The undersigned ALJ commenced the trailed PHC at 2:30 PM and went on the record at 3:00 PM. No appearances were made.

The Administrative Procedures Act governs hearings held before OAH. Government Code section 11455.10 states that a person is subject to the contempt sanctions for disobedience of or resistance to a lawful order. California Education Code section 56500.1, et. seq., sets forth the procedural safeguards for Due Process Hearings. Education Code section 56502 establishes the procedural requirements and timelines for holding Due Process Hearings and issuing decisions, absent continuance requests.

When a party files a complaint pursuant to the Individuals with Disabilities Education Act, or IDEA, that party has a duty to prosecute the case, meaning comply with OAH orders and statutory law, which includes attending PHCs and, where a matter has settled, filing a request for dismissal. Failing to do so is disruptive of the OAH hearing process and interferes its ability to schedule PHCs and hearings.

Accordingly, an Order to Show Cause re Dismissal is set for January 26, 2024, at 1:00 PM. OAH will send an email invitation to appear by videoconference or telephone. Unless a request for dismissal is filed by Student prior to January 26, 2024, at 1:00 PM, the Order to Show Cause will proceed on January 26, 2024, at 1:00 PM.

If Student does not appear at the Order to Show Cause hearing on January 26, 2024, at 1:00 PM, Student's complaint will be considered abandoned and will be dismissed for failure to prosecute. If Student appears and shows cause as to why the matter should not be dismissed, the PHC will proceed immediately following the Order to Show Cause and the due process hearing shall proceed on February 13, 14, and 15, 2024, unless otherwise ordered.

ORDER

1. An Order to Show Cause hearing will proceed on January 26, 2024, at 1:00 PM, unless Student files a request to dismiss the case. If Student does not appear at the Order to Show Cause hearing and does not file a dismissal, OAH will dismiss the case.
2. The prehearing conference is continued to January 26, 2024, at 1:00 PM and will be held after the Order to Show Cause hearing if the matter is not dismissed. The due process hearing is continued to February 13, 14, and 15, 2024.

Cole Dalton

Cole Dalton

Administrative Law Judge

Office of Administrative Hearings