

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024020063

ORDER FOLLOWING PREHEARING CONFERENCE FOR
HEARING BY VIDEOCONFERENCE ISSUING ORDER TO
SHOW CAUSE AS TO WHY THE MATTER SHOULD NOT BE
DISMISSED AND CONTINUING THE PREHEARING
CONFERENCE AND DUE PROCESS HEARING

JULY 22, 2024

On July 22, 2024, Administrative Law Judge Cararea Lucier, 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.

No one appeared on behalf of Student. M. Cristina Cruz, Attorney at Law, appeared on behalf of Los Angeles Unified School District, referred to as Los Angeles. The PHC was recorded. Based upon discussion with the party who appeared, the ALJ issues the following order:

ORDER TO SHOW CAUSE WHY THE MATTER SHOULD NOT BE DISMISSED FOR FAILURE TO PROSECUTE

On February 1, 2024, Student filed a Request for Due Process Hearing with OAH, naming Los Angeles. On February 28, 2024, OAH granted the parties' joint request for a mediation and continuance of the due process hearing. On June 5, 2024, Student's attorney canceled the mediation three hours before it was scheduled to begin. On June 14, 2024, OAH granted Student's motion to amend her complaint. On July 18, 2024, OAH denied the parties' second joint request for a continuance because the parties failed to provide good cause.

On July 19, 2024, videoconference invitations for the PHC were sent electronically using each attorney's email address included in the prehearing conference statements.

On July 22, 2024, the ALJ convened the PHC at 10:00 AM. No one appeared on behalf of Student. M. Cristina Cruz, Attorney at Law, appeared promptly on behalf of Los Angeles. At around 10:10 AM, Ms. Cruz verified that neither she nor her staff had been told Student's attorney would not be attending the PHC. At 10:16 AM the ALJ started the PHC. During the PHC, the ALJ issued an Order to Show Cause as to Why the Matter Should Not Be Dismissed for Failure to Prosecute, with a response due from Student by 5:00 PM on July 25, 2024. If Student files a response, the issue will be discussed at a PHC on July 29, 2024. If Student fails to file a response the matter will be dismissed.

CONTINUANCE OF PHC AND 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 July 22, 2024, and an Order to Show Cause as to Why the Matter Should Not Be Dismissed for Failure to Prosecute has been issued with a response due from Student by 5:00 PM on July 25, 2024, there is good cause to continue the PHC and hearing.

The PHC and due process hearing are continued as follows:

PREHEARING CONFERENCE will be held on July 29, 2024, at 10:00 AM.

DUE PROCESS HEARING will be held on August 6, 7, and 8, 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 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 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.

Cararea Lucier

Cararea Lucier

Administrative Law Judge

Office of Administrative Hearings