BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

CORONA-NORCO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021020275

ORDER FOLLOWING PREHEARING CONFERENCE DETERMINING CASE SHOULD NOT BE DISMISSED AND GRANTING SECOND MOTION TO AMEND COMPLAINT

AUGUST 23, 2021

On August 23, 2021, Administrative Law Judge Rommel P. Cruz, Office of Administrative Hearings, held an order to show cause and 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. A due process hearing request is referred to as a complaint.

Attorney Michael Stoller appeared on behalf of Student. Attorney David Salazar appeared on behalf of Corona-Norco Unified School District. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

ORDER TO SHOW CAUSE AS TO WHY COMPLAINT SHOULD NOT BE DISMISSED

On August 20, 2021, OAH issued an order to show cause as to why the matter should not dismissed following Mr. Stoller's failure to appear at the August 20, 2021 PHC. This was Mr. Stoller's second failure to appear for a PHC in this matter. The first occurred at the July 19, 2021 PHC.

No statute or regulation governs the dismissal of a special education due process hearing request due to the petitioning party's failure to participate in or prosecute their case. California Code of Civil Procedure section 583.410 provides guidance by analogy and allows for discretionary dismissal of a case if it is not prosecuted to trial or resolution within two years. By this authority, a party should be diligent in pursuing a dur process hearing and comply with all OAH orders, or risk dismissal or other sanctions.

At the PHC, Mr. Stoller apologized to OAH and Corona-Norco Unified for failing to appear at the August 20, 2021. Mr. Stoller explained he was out of state to assist his child in preparing to start college, and simply forgot about the PHC. Though Mr. Stoller's explanation does not constitute good cause, a dismissal of the case based on the totality of the circumstances, would prejudice Student. Accordingly, this matter shall not be dismissed.

MOTION TO AMEND COMPLAINT

On August 20, 2021, Student filed a motion to amend the complaint and an amended complaint, referred to as the second amended complaint. At the PHC, Corona-Norco Unified did not object to the motion to amend the complaint.

An amended complaint may be filed when the other party consents in writing and is given the opportunity to resolve the complaint through a resolution session, or when the hearing officer grants permission. The hearing officer may grant permission at any time more than five days before the due process hearing. (20 U.S.C. §1415(c)(2)(E)(i).) The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. §1415(c)(2)(E)(ii).)

The motion to amend is timely and is granted. The second amended complaint shall be deemed filed on the date of this order. All applicable timelines shall be reset as of the date of this order. No further amendments to the complaint shall be granted. OAH will issue a scheduling order with the new dates.

MOTION TO DISMISS ISSUES

On June 23, 2021, Corona-Norco Unified filed motion to dismiss specific issues in Student's first amended complaint. Student's second amended complaint is granted, therefore, Corona-Norco Unified's motion to dismiss is denied as moot. Corona-Norco Unified may refile its motion to dismiss issues in the second amended complaint.

REQUEST FOR OFFICIAL NOTICE

On June 23, 2021, Corona Norco Unified filed a request for official notice of a compliance investigation report dated September 26, 2019, by the California Department of Education. The report was not filed with the motion. The request is denied without prejudice. Corona-Norco Unified may refile the request for official notice with the attached report.

MEDIATION

At the PHC, parties requested to schedule mediation in this matter to coincide with the mediations scheduled for Student's siblings. The request for mediation is granted. Mediation shall be held on August 27, 2021, 9:00 AM to 4:30 PM. Mediation shall be held by video or telephone.

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 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.

IT IS SO ORDERED.

Rommel P. Cruz

Rommel P. Cruz
Administrative Law Judge
Office of Administrative Hearings