BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT

v.

WHITTIER UNION HIGH SCHOOL DISTRICT, WHITTIER AREA COOPERATIVE SPECIAL EDUCATION PROGRAM, AND LA SERNA HIGH SCHOOL.

OAH CASE NUMBER 2022090162

ORDER FOLLOWING PREHEARING CONFERENCE FOR HEARING BY VIDEOCONFERENCE, ORDER DENYING MOTION TO DISMISS, ORDER DENYING MOTION FOR CONTINUANCE, AND ORDER GRANTING CONTINUANCE FOR RESOLUTION SESSION

OCTOBER 11, 2022

On October 10, 2022, Administrative Law Judge Chris Butchko, 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.

Student's Parent appeared on behalf of Student. Darin Barber, Attorney at Law, appeared on behalf of Whittier Union High School District, Whittier Area Cooperative Special Education Program, and La Serna High School. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

PENDING MOTIONS

WHITTIER, WHITTIER SELPA, AND LA SERNA'S MOTION TO DISMISS

On October 7, 2022, Whittier, Whittier SELPA, and La Serna jointly filed a motion to dismiss this action due to Parent's failure to attend a resolution session. Parent has not filed in response. The motion was discussed with the parties at the PHC.

A local educational agency is required to meet with the parents and Student's relevant Individualized Education Program team members within 15 days of receiving Student's complaint. (20 U.S.C. § 1415(f)(1)(B)(i)(I); 34 C.F.R. § 300.510(a)(1) (2006).) The meeting, called an early resolution session, can be waived in writing by both parties or by agreement to use mediation. (34 C.F.R. § 300.510(a)(3) (2006).) If the parents do not attend the resolution session, and it was not waived, there can be no due process hearing until the resolution session waived or held. (34 C.F.R. § 300.510(b)(3) (2006).) The respondent can request the case be dismissed after a 30-day period, if it documented reasonable efforts to hold the resolution session and the parents did not attend. (34 C.F.R. §300.510(b)(4) (2006).)

The motion was accompanied by a declaration from Whittier's Director of Special Education reporting that the Director sent a letter to Parent on September 12, 2022, by

mail and email, offering to hold a resolution session. Parent responded by email the same day, declining the resolution session. The Director sent another letter on September 14, 2022, again by mail and email, offering addition dates for a resolution session. Parent responded on September 15, 2022, again declining to participate.

This matter was initiated by Parent's filing on Wednesday, September 7, 2022. Whittier, Whittier SELPA, and La Serna contacted Parent on Friday, September 12. That contact allowed sufficient time for the resolution session to be held within the deadline. Whittier, Whittier SELPA, and La Serna made more than one effort to arrange the resolution session, and they were successful in contacting Parent. Whittier, Whittier SELPA, and La Serna have demonstrated that they made a reasonable effort to arrange the resolution session.

Parent's responses are included with the moving papers. Parent stated on September 12, 2022, that Parent was not available to meet and did not want "a mediation." In response to the proposal of other dates, Parent stated on September 15, 2022, that Parent was not available and could not do an in-person meeting. Parent again stated that Parent did not request a mediation and that Parent told OAH that Parent did not want to have a mediation. Parent was affirmatively declining the offer of a resolution session and indicating that further rescheduling was pointless. Parent was refusing to attend a resolution session. Parent confirmed receiving the offers to hold the resolution session at the PHC, and again stated that Parent was not interested in mediating.

If a parent refuses to participate in a resolution session, that parent's action can be dismissed. (34 C.F.R. §300.510(b)(4) (2006).) Here, however, Student's interests are being represented by Parent, and not by legal counsel. Parent appears to have confused the required resolution session with mediation, which is a voluntary meeting

conducted by a neutral mediator. Parent may decline mediation, but must attend a resolution session. Accordingly, the motion to dismiss is denied without prejudice and this matter will be continued to allow a second opportunity for Parent to participate in a resolution session. There will be no third opportunity. If Parent does not participate, the matter will be dismissed.

Whittier, Whittier SELPA, and La Serna are directed to contact parent and propose dates for a resolution session. The parties are directed to participate in a resolution session within fifteen days of this order.

STUDENT'S MOTION TO CONTINUE THE PREHEARING CONFERENCE

On Friday, October 7, 2022, Student filed a motion to continue the prehearing conference. That motion was not accompanied by a proof of service, and Whittier, Whittier SELPA, and La Serna confirmed at the PHC they did not receive a copy of the motion. Accordingly, the motion is defectively made and is denied.

CONTINUANCE

The parties have been directed to schedule and attend a resolution session. The current dates for hearing are vacated. The matter will proceed as follows:

PREHEARING CONFERENCE will resume on Monday, October 31, 2022, at 10:00 AM. Parent is reminded that prehearing conference statements must be filed three business days before the PHC.

DUE PROCESS HEARING will take place on Tuesday, November 15, 2022, through Thursday, November 17, 2022. The hearing will begin at 9:30 AM on all days, and continue day to day, Tuesday through Thursday, as needed at the discretion of the ALJ.

The parties shall immediately notify all potential witnesses of the hearing dates and shall subpoena witnesses, if necessary, to ensure that the witnesses will appear to testify. 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.

REQUIRED STATEMENT REGARDING RESOLUTION SESSION

No later than October 28, 2022, Whittier, Whittier SELPA, and La Serna shall file a statement setting out whether the resolution session was held, waived, or refused by Parent, and a new motion to dismiss if Parent failed to attend the mandated resolution session.

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.

IT IS SO ORDERED.

Chris Butchko

Chris Butchko
Administrative Law Judge
Office of Administrative Hearings