BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:

PARENT ON BEHALF OF STUDENT

AND

MAGNOLIA SCIENCE ACADEMY - SANTA ANA,

OAH CASE NUMBER 2023010808

OAH CASE NUMBER 2023010438

ORDER OF DISMISSAL OF STUDENT'S ISSUES, FOLLOWING ORDER TO SHOW CAUSE

APRIL 07, 2023

On April 3, 2023, Administrative Law Judge Clifford H. Woosley, Office of Administrative Hearings, convened a prehearing conference by videoconference, for these consolidated cases. The Administrative Law Judge is called an ALJ. The Office of Administrative Hearings is called OAH. The prehearing conference is called a PHC.

Parents on behalf of Student did not appear when the PHC was initially convened at 3:00 PM, April 3, 2023. The Parents were provided additional time to appear. ALJ Woosley reconvened the PHC at 3:25 PM. Parents had not appeared. The PHC therefore proceeded as to Magnolia Science's case.

Parents on behalf of Student filed a request for due process on January 26, 2023. On February 6, 2023, Student filed an amended complaint. On February 6, 2023, OAH issued a Scheduling Order, setting the PHC for March 17, 2023, and the hearing for March 28, 2023. The Scheduling Order instructed the parties to file and serve a Prehearing Conference Statement at least three business days before the prehearing conference. On March 16, 2023, OAH issued an order granting a continuance to the dates requested by Parents, setting the PHC for April 3, 2023, at 3:00 PM, and the hearing for April 11, 12, and 13, 2023.

On March 17, 2023, OAH granted Magnolia Science's motion to consolidate its previously filed due process complaint with Student's complaint. Student's case was deemed primary, and the consolidated matters were set for the dates set in Student's case. That is, April 3, 2023 for the PHC and April 11, 2023 for the hearing. OAH properly served Parents with the scheduling order on February 6, 2023, a continuance order on March 16, 2023, and the consolidation order on March 20, 2023

Here, Student has not diligently pursued this matter. Parents on behalf of Student failed to file a prehearing conference statement and failed to appear at the prehearing conference.

On April 4, 2023, ALJ Woosley issued an Order to Show Cause Why Student's Issues Should Not Be Dismissed for Inactivity and an Order Continuing the Prehearing Conference for Student's Complaint, setting a hearing on the Order to Show Cause for April 10, 2023. Student was ordered to file a written response to the Order to Show Cause with OAH, no later than 5:00 PM, Thursday, April 6, 2023, explaining why this matter should not be dismissed for lack of activity. Student was also ordered to file a prehearing conference statement.

APPLICABLE LAW

If the parent and local education agency have not resolved the due process complaint within 30 days of the receipt of the complaint, OAH is required to issue a decision within the next 45 days, unless a continuance is granted for good cause. (20 U.S.C. § 1415(f)(1)(B)(ii); 34 C.F.R. § 300.51; Ed. Code, § 56502, subd. (f).)

DISCUSSION

Here, Student did not file a prehearing conference statement pursuant to the Scheduling Order and did not appear at the April 3, 2023 PHC, a date which was requested by Parents. Further, Student did not comply with the Order to Show, failing to file a written response as directed. The Order stated that if Parents did not file a response to the OSC, with a prehearing conference statement, Student's issues would be dismissed on April 7, 2023.

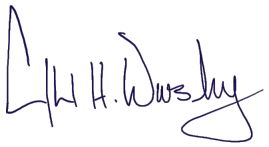
Student has not diligently pursued this matter and has failed to explain the failure to file a prehearing conference statement and appear at the prehearing conference.

ORDER

1. Student's issues are hereby dismissed.
2. The April 10 2023 hearing, on the Order to Show Cause and PHC on Student's Issues, is vacated.

3. This consolidated matter shall proceed to due process hearing on Magnolia Science Academy's issues, only, as scheduled on April 18, 19, and 20, 2023.

IT IS SO ORDERED.



Clifford H. Woosley

Administrative Law Judge

Office of Administrative Hearings