BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: OAKLAND UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017030950
PARENT ON BEHALF OF STUDENT, v. OAKLAND UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017050146 ORDER DENYING STUDENT'S REQUEST TO DISMISS DISTRICT'S CASE; DENYING STUDENT'S REQUEST FOR SUMMARY JUDGMENT; AND DISMISSING STUDENT'S CASE

On October 16, 2017, Parent on behalf of Student filed with the Office of Administrative Hearings a document entitled, "Request for Dismissal of Case No. 2017030950 with prejudice/Request to Appear by Phone for Remainder of Hearing."[1] Within this document, Parent listed Student's issues for hearing and proposed resolutions, and requested judgment in Student's favor. Parent additionally asked that she be allowed to appear by phone if she is ordered to continue with the hearing.

Administrative Law Judge Theresa Ravandi convened the consolidated due process matter in this hearing as scheduled on October 17, 2017, at approximately 9:40 a.m., after waiting approximately 10 minutes for Parent to appear. As Parent had not yet arrived, the ALJ delayed the start of the hearing for an additional 30 minutes. During this time, OAH staff attempted to reach Parent by phone regarding her attendance at hearing and left a voicemail message asking her to call OAH with an update. Parent failed to appear at hearing, did not answer OAH's call, and did not respond to OAH's voicemail message.

[1] OAH received this document on Saturday, October 14, 2017. It is deemed filed as of the next business day. The administrative law judge did not receive this document until 10:00 a.m., on October 17, 2017.

The ALJ reviewed Parent's October 16, 2017 filing, re-convened the due process hearing at approximately 10:30 a.m., and attempted to contact Parent by phone from the hearing room. Parent was not available for hearing and did not answer the call which went to a voicemail system. Oakland opposed Parent's requests and moved to dismiss Student's case on the grounds that Parent had abandoned the matter.

APPLICABLE LAW AND DISCUSSION

Request to Dismiss Oakland's Case and for Judgment in Student's Favor

Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc…..), special education law does not provide for a summary judgment procedure. Oakland filed a request for due process and seeks a ruling that its fall 2016 psychoeducational evaluation of Student is legally compliant such that Student is not entitled to a publically funded independent psychoeducational evaluation. Student's motion to dismiss Oakland's Case is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits. Oakland's issue is subject to proof at an evidentiary hearing and Oakland is entitled to proceed to hearing as to its issue. Accordingly, this matter proceeded to hearing as scheduled.

Student has identified numerous issues for hearing that are also subject to proof at an evidentiary hearing. There is no provision for a judgment in favor of Student prior to her introducing evidence that Oakland would then have the opportunity to refute. Student seeks an advanced ruling on the merits as to her case. Student failed to provide any legal authority for OAH to proceed in this manner. Accordingly, the motion was denied.

Failure to Appear at Hearing

Under the reauthorized Individuals with Disabilities Education Improvement Act, a hearing must be conducted and a decision rendered within 45 days following a 30-day resolution period, after receipt of Student's due process notice, in the absence of an extension. (See Ed. Code §§ 56502, subd. (f), and 56505, subd. (f)(3).) Given the short time frames applicable to this case, it is critical that parties and their representatives participate in advancing the matter to hearing.

This matter has been pending for nearly six months. Student originally filed her case in April of 2017, while Oakland filed its case in March 2017. Parent was aware of the dates for hearing and failed to appear.[2] Although Parent requested to appear by phone, she did not

[2] Parent participated in the October 2, 2017 prehearing conference during which the hearing dates were confirmed. On October 11, 2017, Parent filed a request to continue the hearing which was scheduled to begin October 17, 2017. OAH denied her request on October 13, 2017, and served her with the order.

timely file this request for the ALJ to review and consider prior to hearing, and did not appear even though no ruling had been made. Further, Parent failed to make herself available by phone the morning of the hearing, despite her request to participate telephonically. Student's Case was dismissed due to Parent's failure to appear at hearing. Oakland's case proceeded to hearing in Parent's absence.

ORDER

1. Student's request to dismiss Oakland's Case, OAH Case Number 2017030950, is denied.

2. Student's request for summary judgment in her favor is denied.

3. Oakland's request to dismiss Student's Case, OAH Case Number 2017050146, is granted.

IT IS SO ORDERED.

DATE: October 18, 2017

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Theresa Ravandi
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THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings