BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT

v.

POMONA UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2019051199

ORDER TO SHOW CAUSE AS TO WHY MATTER SHOULD NOT BE DISMISSED FOR FAILURE TO PROSECUTE, CONTINUING PREHEARING CONFERENCE AND DUE PROCESS HEARING

On January 13, 2020, 2019, Administrative Law Judge Clifford H. Woosley, Office of Administrative Hearings, convened a telephonic prehearing conference. The Administrative Law Judge will be referred to as an ALJ. The Office of Administrative Hearings will be referred to as OAH. Prehearing conference is referred to as PHC.

Student did not appear; Father spoke for Student. Howard Fulfrost, Attorney at Law, appeared on behalf of Pomona Unified School District. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order.

FAILURE TO PROSECUTE

Student is over 18 years old. OAH has not received notice that educational rights have been assigned by Student. Father spoke on Student's behalf. Student filed this due process request on May 18, 2019, and OAH set the PHC for July 17, 2019, and the hearing for July 23 through 25, 2019. On July 8, 2019, OAH granted the parties' joint request to set mediation and continue the PHC and hearing, setting the PHC for September 20, 2019, and hearing for October 1 through 3, 2019. On August 30, 2019, Student filed notice of representation. At the September 20, 2019 PHC, Student's counsel requested a continuance to prepare for hearing; Pomona Unified did not object. The PHC was continued to October 18, 2019, and hearing to October 29 through 31, 2019.

On October 11, 2019, Student's counsel gave notice of withdrawal. OAH convened the October 18, 2019 PHC. Student did not appear at the PHC. Father appeared and asked for another continuance to prepare for hearing or possibly obtain new counsel. Pomona Unified did not object. OAH granted Father's request. Additionally, Student was ordered to appear at the continued PHC of January 13, 2020, unless Student filed an Assignment of Educational Rights, Notice of Representation by an attorney, or other evidence of representation. Student was also ordered to file a prehearing conference statement that conformed with the requirements stated in the Scheduling Order issued by OAH on May 30, 2019. Despite being provided more than three months to comply, Student has not filed any documents with OAH since the prehearing conference Order.

Father stated he had been unsuccessful in finding legal representation. He also said he is contemplating seeking a legal conservatorship, but has not done so to date.

Here, Student has not diligently pursued this due process matter, which is now more than seven and a half months old. Student failed to appear at the prehearing conferences. Father has no legal capacity to represent Student. Student failed to comply with the October 11, 2019 OAH order. Therefore, the presently scheduled PHC and hearing dates are vacated.

Student is ordered to show cause in writing no later than 5:00 PM on March 11, 2020, as to why this matter should not be dismissed. Student shall address why she has delayed prosecuting her request for due process, ignored OAH orders regarding the filing of prehearing conference statements, and failed to appear at the PHC's. Student should further explain and show good cause why her due process complaint should not be dismissed for failure to diligently prosecute. Student shall also file a prehearing conference statement by March 11, 2020.

The order to show cause hearing shall take place telephonically on March 16, 2020, at 3:00 PM., unless otherwise ordered. Failure by Student to submit a written response to the Order to Show cause by March 11, 2020, or to appear at the March 16, 2020 telephonic hearing, may result in this matter being dismissed or other sanctions.

If Student demonstrates that the matter should not be dismissed, the prehearing conference shall take place immediately following the order to show cause conference, with this matter proceeding to hearing on April 1, and April 2, 2020.

ORDER TO SHOW CAUSE

1. The matter is continued to a telephonic conference at 3:00 PM, March 16, 2020, at which time Student or her legal representative will show cause why her complaint should not be dismissed for lack of prosecution.

2. Student or her legal representative must file a brief by close of business, March 11, 2020, addressing why her complaint should not be dismissed for lack of prosecution.
3. Student or her legal representative must file a prehearing conference statement by close of business, March 11, 2020, that complies with the requirements stated in the May 20, 2019 Scheduling Order.
4. Pomona Unified is not required to again file a prehearing conference statement unless circumstances have changed.
5. All dates are vacated. If Student successfully demonstrates good cause that the complaint not be dismissed on March 16, 2020, the prehearing conference shall proceed immediately after the order to show cause hearing, unless otherwise ordered.
6. The hearing is continued to April 1, and April 2, 2020, beginning at 1:30 PM on the first day and at 9:00 a.m. on all other days, continuing day to day at the discretion of the ALJ, unless otherwise ordered. These hearing dates will be vacated if this matter is dismissed at the order to show cause hearing.

IT IS SO ORDERED.

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DATED: January 13, 2020

Clifford H. Woosley
Administrative Law Judge
Office of Administrative Hearings