BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SCHOOL OF UNLIMITED LEARNING AND FRESNO UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2013120568 ORDER FOLLOWING ORDER TO SHOW CAUSE AND EXPEDITED PREHEARING CONFERENCES, AND ORDER GRANTING STUDENT'S MOTION TO DISMISS CASE WITHOUT PREJUDICE

On January 27, 2014, Administrative Law Judge (ALJ) Deidre L. Johnson, Office of Administrative Hearings (OAH), convened a mandatory telephonic prehearing conference for Student's expedited portion of this case. Due to Student's failure to appear, an Order to Show Cause re Dismissal was issued which set a telephonic show cause conference for January 31, 2014, and continued the prehearing conference to that date. On January 30, 2014, Student filed a response to the Order to Show Cause.

On January 31, 2014, Judge Johnson convened the order to show cause and expedited prehearing conferences by telephone. Attorney Sang-Jin Nam appeared for District.[1] Parent appeared on behalf of Student.[2] Attorney Maureen Graves was present to assist Parent and Student during the first part of the conference call. For the second part of the conference call, Ms. Graves became Student's attorney of record.

1. Order to Show Cause: Parent established that she did not intentionally fail to participate in and prosecute Student's case when she failed to file a prehearing conference statement or participate in the conference call on January 27, 2014, for the expedited case.

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[1] School of Unlimited Learning is a charter school in the District and therefore both entities are collectively referred to as District. The issue whether the charter school is a proper party to this proceeding was not reached.

[2] Law clerk Sydney Smith was present with Mr. Nam. An advocate for Student and Parent, Janetta Sconiars, was present with Parent. Neither participated in the conferences. Parent represented that she was medicated due to her illness and relied on her advocate and Ms. Graves. A break was taken during the call to permit the parties to confer confidentially before continuing with the conferences.

Parent was ill and received medical treatment on that date. Parent's filing of motions on and after January 27, 2014, including a motion to amend the complaint, and her participation in the conference call on January 31, 2014, established that Student intends to prosecute and advance her case to hearing. Accordingly, Student established that OAH should not dismiss the expedited portion of her case on this basis.

2. Motion to Amend: On December 17, 2013, Student filed a complaint naming District. By an amended scheduling order dated December 27, 2013, OAH set dual hearing dates for: (a) an expedited hearing regarding Student's disciplinary issues on February 4, 5, and 6, 2014, with a telephonic prehearing conference on January 27, 2014; and (b) a regular hearing regarding Student's issues claiming he was denied a free appropriate public education (FAPE) beginning on February 11, 2014, with a telephonic prehearing conference on February 3, 2014.

On January 27, 2014, Student filed a motion to amend her complaint along with a proposed amended complaint. On that date she also filed a motion to compel production of documents. On January 30, 2014, Student filed an "addendum" to her proposed amended complaint to attach an exhibit. On January 31, 2014, District filed an opposition to the motion.[3] In Student's motion to amend, along with her show cause response, she moved to withdraw her request for an expedited hearing as to the disciplinary issues. However, during the conference call, Parent indicated she made that request because she believed District's expulsion proceeding had been vacated and had just learned it was still in process. Therefore, Student's motion to amend addressed both the expedited and unexpedited portions of her complaint.

An amended complaint may be filed when either (a) the other party consents in writing and is given the opportunity to resolve the complaint through a resolution session, or (b) the hearing officer grants permission, provided the hearing officer may grant such permission at any time more than five (5) days prior to 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).)

District objected that Student's motion to amend the complaint was not timely as to her expedited case because the expedited due process hearing date is set within five days from January 31, 2014, the date upon which the ALJ would otherwise rule. District had no objection to Student's request to amend the unexpedited portions of the complaint except as

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[3] Student is directed not to file exhibits with her complaint as exhibits are presented at hearing. In addition, exhibits may be relevant to support certain motions. District is directed not to attach copies of documents already filed with OAH to its pleadings. Here, District's opposition contained a copy of Student's motion and lengthy complaint, which was unnecessary, cumulative, and wasteful of the State's storage capacities.

to the content of the proposed amended pleading. District declined to consent to Student's motion to amend her entire complaint.

Student therefore rescinded her motion to amend and moved to withdraw her entire complaint at this time without prejudice. District objected as to the expedited case based on claimed prejudice it has incurred in preparing for hearing. However, Student has the right to withdraw her case and did so on the record. All dates scheduled in this matter are vacated.

ORDER

1. Student's complaint is dismissed without prejudice.

2. Student's motion to compel production of documents is moot.

Dated: February 4, 2014

/s/
DEIDRE L. JOHNSON
Administrative Law Judge
Office of Administrative Hearings