

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 NO. 2009010583

ORDER DISMISSING CASE
WITHOUT PREJUDICE

INTRODUCTION

Student is represented by his mother (Mother). On January 23, 2009, on behalf of Student, Mother filed a request for due process hearing (Complaint) naming Pomona Unified School District (District) as the respondent and alleging that District denied Student a free and appropriate education (FAPE) under the Individuals with Disabilities Education Act (IDEA). On February 6, 2009, for good cause, Student's case was continued.

On April 29, 2009, Student's Complaint was amended (Amended Complaint). By written Order of April 29, 2009, served on Mother, the due process hearing (DPH) on Student's Amended Complaint was set for June 12, 2009, to be preceded by a prehearing conference (PHC) on June 5, 2009. Mother failed to participate in June 5, 2009 PHC, as a result of which, the PHC was continued to June 8, 2009.

On June 8, 2009, on Student's motion, the DPH was continued to July 17, 2009, and the PHC was continued to July 10, 2009. Student's PHC Statement was required to be served and filed on July 7, 2009. Mother was given written notice. Student's PHC Statement was not filed and on July 10, 2009, Mother again failed to participate in the PCH. As a result, the PHC was continued to July 13, 2009. Mother was given both telephonic and written notice.

On July 13, 2009, Mother again failed to participate in the PCH. She also continued to fail to file Student's PHC statement. As a result, OAH set an Order to Show Cause re Dismissal (OSC) that required Student, through Mother, to show cause, at a telephonic hearing on July 16, 2009, at 9:00 a.m., as to why this case should not be dismissed for failure to participate, prosecute, or advance the matter. Mother was given telephonic notice and served with a copy of the OSC. After her receipt of the OSC, Mother communicated with OAH staff to the effect that her failure to participate in the prior PHC's and to file Student's PHC statement were due to her intermittent health issues. She did not request a postponement of the OSC hearing, nor did she advise that she could not appear by telephone.

On July 16, 2009, at 9:00 a.m. and again at 9:11 a.m., Administrative Law Judge (ALJ) Steven Charles Smith telephoned Mother at her telephone number of record to convene the OSC hearing. Mother did not answer her telephone either time. Attorney Garrett Hines appeared by telephone on behalf of District. The OCS telephone calls were recorded.

APPLICABLE LAW AND DISCUSSION

Under IDEA and implementing state special education law, a hearing must be conducted and a decision rendered within 45 days following a 30-day resolution period, after receipt of the request for 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 was critical that Mother, as Student's representative, participate in advancing the case to hearing.

In light of Mother's three prior failures to participate in PHC's and her continued failure to file Student's PHC statement, followed by her failure to participate in the OSC and provide good cause why Student's case should not be dismissed, good cause warrants dismissal of this case.

Therefore, good cause appearing, Student's case is dismissed, without prejudice.

IT IS SO ORDERED.

Dated: July 16, 2009

/s/

STEVEN CHARLES SMITH
Administrative Law Judge
Office of Administrative Hearings