

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LONG BEACH UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2010090508

ORDER RE DISMISSAL WITHOUT
PREJUDICE

On April 27, 2011 at 1:30 p.m. Administrative Law Judge Eileen M. Cohn (ALJ) initiated a telephonic hearing on the Order to Show Cause (OSC) re Dismissal in this action for Student's failure to diligently prosecute his complaint. The ALJ called Student twice. Student did not appear. Hans Gillinger, attorney at law, appeared on behalf of District. The hearing was recorded.

APPLICABLE LAW

The IDEA requires speedy resolution of complaints. Under the IDEA, parties must request a hearing within two years of the date they knew or should have known of the alleged wrongful action. (Code Regs § 300.511(e).) The parties must be given an opportunity for an impartial due process hearing, Code Reg§ 300.511(a). Subject to the 30 day stay after the complaint, or amended complaint if filed, and continuances based upon good cause, a final decision must be reached and mailed to the parties within forty-five days. (Code Regs § 300.515).

Although it is always preferable to resolve actions on their merits (Cal. Civ. Proc. Code § 583.130.), dismissal without prejudice is warranted where, among other things, a party fails to proceed with due diligence.

DISCUSSION

Student has failed to diligently participate in, prosecute, or advance his complaint. On September 10, 2010, Student filed a due process hearing request (complaint), naming the Long Beach Unified School District (District) as respondent. Student is over 18 years of age and his participation in the due process hearing is required. On December 20, 2010, Student's counsel withdrew. As a result of the withdrawal of Student's counsel, Student is representing himself. In former counsel's notification to OAH, he represented that he provided Student with the scheduling order and the relevant dates and deadlines in this matter. The attorney's notice of withdrawal also directed OAH to send all future documents to Student to the same address set forth in Student's complaint, which is the address of

Student's parents. The notice of withdrawal did not include an updated phone number for Student. OAH has on file the phone number for Student's parents.

On February 16, 2011, the parties filed their third joint request for a new scheduling order, requesting a continuance of the PHC and due process hearing. District filed the moving papers on behalf of the parties which contained District counsel's declaration of her discussions with Student. Counsel stated in her declaration that she had spoken with Student on February 15, 2011, and he agreed to the continuance. She stated that Student did not have a fax machine so she sent the stipulation for him to sign by courier. The stipulation was delivered to his parent's address, the same address set forth in Student's complaint and his former counsel's notice of withdrawal. Student signed the stipulation and returned it to District for inclusion in the documents provided to OAH as part of their joint request for a continuance.

On February 16, 2011, OAH granted the requested continuance and issued a scheduling order setting the PHC for April 20, 2011, at 1:30 p.m., and the due process hearing for April 27-28, 2011, and May 2-3, 2011. OAH served Student the Order by mail.

On April 13, 2010, District filed a unilateral request for continuance of the due process hearing. Prior to filing its request for continuance, District's counsel attempted to meet and confer, as she had in the past, with Student. District's counsel contacted Student, as she had previously done, at his parent's phone number, but was unsuccessful. Counsel left a detailed voice mail on parent's phone machine, and sent correspondence memorializing the voice mail to Student.

On April 15, 2011, District filed and served Student its PHC statement. District's PHC statement set forth the date and time of the PHC. Student did not file a PHC statement.

On April 18, 2011, OAH clerk, Sonia Hwang, attempted to contact Student by telephone, calling the parent's phone number, to remind Student of his obligation to file a PHC statement. Ms. Hwang spoke to parent and requested that parent provide her with Student's contact information. Parent refused to disclose any information about Student.

On April 20, 2011, ALJ Cohn convened the telephonic PHC. She called parent's phone number twice and left voice mail messages for Student advising him of the PHC, providing him with the name of the OAH clerk assigned to the matter and the OAH phone number so that he could contact the clerk regarding the PHC and due process hearing. She also advised in her voice mail message that she would be continuing the PHC and scheduling an OSC Re: Dismissal for April 27, 2011 at 1:30 p.m. ALJ Cohn also advised in her message that she would be sending Student an Order in the mail that would provide details of the schedule and that he should make sure to read it. District's counsel confirmed that the phone number provided to OAH was the parent's phone number. District advised the ALJ that Student had a cell phone at one time, but that number had been disconnected.

At the PHC, the ALJ continued the telephonic PHC to April 27, 2011, at 1:30 p.m. to allow Student more time to appear. The ALJ advised District that based upon Student's failure to appear at the PHC, she was setting a telephonic hearing for an Order to Show Cause (OSC) re: Dismissal, on April 27, 2011, at 1:30 p.m.

On April 21, 2011, OAH served Student via overnight mail the OSC re: Dismissal, notifying him that the telephonic hearing would be held on April 27, 2011, at 1:30 p.m. On April 27, 2011, Student failed to appear at the telephonic hearing for the OSC re: Dismissal.

For the above reasons, the ALJ orders the above captioned action dismissed without prejudice, for failure of Student to participate in, prosecute, or advance the matter. All dates are vacated.

IT IS SO ORDERED.

Dated: April 29, 2011

/s/

EILEEN M. COHN
Administrative Law Judge
Office of Administrative Hearings