

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MURRIETA VALLEY UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011041004

ORDER TO SHOW CAUSE RE:
DISMISSAL AND CONTINUANCE OF
PREHEARING CONFERENCE

TELEPHONIC OSC AND PHC:
AUGUST 29, 2011 AT 10:00 A.M.

On April 27, 2011, Student filed a Due Process Hearing Request (complaint) naming the Murrieta Valley Unified School District (District). The Office of Administrative Hearings (OAH) issued a scheduling order on April 29, 2011, which it served on both parties, setting dates for the prehearing conference and due process hearing. Instructions on filing a prehearing conference statement were included in the scheduling order. On May 25, 2011, in an order served on both parties, OAH granted the parties' joint request for continuance. OAH scheduled the prehearing conference for August 17, 2011, at 10:00 a.m., and the due process hearing for August 31, 2011. Both dates were those requested by the parties in their request for continuance.

Neither party filed a prehearing conference statement as directed in the original scheduling order. An OAH staff member telephoned the parties on August 15 and 16, 2011, leaving messages with both reminding them to file their statements and reminding them of the prehearing conference. Neither party returned the call or filed a prehearing conference statement in response to the reminder.

On August 17, 2011, at 10:00 a.m., the undersigned Administrative Law Judge (ALJ) attempted to convene the prehearing conference. She first telephoned Student's father, who represents Student, at both of his telephone numbers of record. No one answered at the home telephone number and there was no voice mail recording. The ALJ left a voice mail on the cell phone reminding Student's father that the prehearing conference had been scheduled as requested by the parties and asking Student's father to immediately contact OAH with regard to this matter. The ALJ provided Student's father with the telephone number for OAH in Sacramento and the name of the OAH staff member in Sacramento assigned to the case. The ALJ then attempted to contact the District's Special Education Director. The Director was not present at the District's offices. Her secretary stated that the PHC was not on the Director's calendar. The ALJ left a message with the secretary regarding the fact that the

prehearing conference was supposed to be occurring, and that it had been scheduled pursuant to a date requested by the parties.

As of the time this Order is being prepared, neither party has contacted OAH.

Based upon the foregoing facts, the ALJ issues the following Order:

ORDER

1. The prehearing conference date is vacated. The prehearing conference is continued until August 29, 2011, at 10:00 a.m., to be held subsequent to the hearing on the Order to Show Cause as described below.

2. In view of Student's failure to participate in the prehearing conference, by failing to file a prehearing conference statement and to appear at the telephonic prehearing conference, **Student is ordered to show cause, at a telephonic hearing on Monday, August 29, 2011, at 10:00 a.m., as to why this matter should not be dismissed for failure to participate, prosecute, or advance the matter.** Should Student provide adequate justification at the hearing on the order to show cause, the prehearing conference will proceed immediately after the Order to Show Cause is heard. During the continued prehearing conference, Student and the District must be prepared to discuss the issues, witnesses and documents that they intend to use at the due process hearing.

3. If Student fails to appear at the telephonic hearing on August 29, 2011, at 10:00 a.m., or appears and fails to provide adequate justification why the case should not be dismissed for failure to participate, prosecute, or advance the matter, the matter shall be dismissed without prejudice and the hearing date of August 31, 2011, shall be vacated.

4. If Student wishes to withdraw his complaint without prejudice, he must do so by filing a written notice of withdrawal with OAH in Sacramento, with service on the District.

IT IS SO ORDERED.

Dated: August 17, 2011

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings