

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

IRVINE UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2011110180

ORDER GRANTING STUDENT'S
MOTION TO WITHDRAW HIS
COMPLAINT WITH PREJUDICE

PROCEDURAL HISTORY

Student, through his parents, filed a request for due process hearing (complaint) with the Office of Administrative Hearings (OAH) on November 2, 2011, naming the Irvine Unified School District (District) as respondent. Student's complaint, as clarified at the Prehearing Conference held on January 18, 2012, raised the following issue: Did the District deny Student a free appropriate public education because the curriculum program of Student's placement, as defined in his April 8, 2011 individualized education program (IEP) and as modified in his October 26, 2011 IEP, is not appropriate to meet his unique needs and because the placement does not constitute a safe environment for Student?

The undersigned Administrative Law Judge (ALJ) convened the due process hearing in this matter beginning on January 24, 2012. Student was represented by his mother and father. The District was represented by Alefia Mithaiwala, Attorney at Law. Also present for the District were Mary Bevernick, the District's Director of Special Education, and Karena Gibbs, a District Program Specialist.

Student and the District came prepared to the hearing with exhibit binders. By approximately 1:00 p.m. on the fourth day of hearing on January 27, 2012, Student, through his parents, had presented the testimony of 11 witnesses in support of his case in chief. The District had presented one witness out of order. The only two remaining witnesses scheduled to testify at that time were Student's parents.

After going off the record for a lunch break, Student's parents approached the ALJ wishing to discuss a procedural issue. The ALJ informed them that any discussion, whether on or off the record, would have to include the District. The ALJ then conducted an off-the-record discussion the parties and their representatives. Parents' procedural question concerned whether they could withdraw their complaint at that time. The ALJ informed Parents that she would probably rule that a withdrawal of the complaint would have to be with prejudice to their re-filing a complaint on the same allegations given the fact that

testimony had been taken and four days spent on the hearing. The parties then resumed their lunch break.

After the break, Student, through his parents, renewed his request to withdraw his complaint, this time specifically with prejudice. The District opposed the motion, asserting that the hearing should proceed to conclusion and eventual decision by the ALJ. The District asserted that it had suffered significant prejudice because of the resources and time committed to defending the issues in due process and that it was therefore entitled to a decision on the merits.

After consideration of the parties' arguments, the ALJ tentatively ruled that only a withdrawal with prejudice was appropriate given the timing of Student's motion and the prejudice to the District if the motion to withdraw were to be granted without prejudice to the re-filing of the issues by Student. The ALJ tentatively granted Student's motion to withdraw with prejudice.

APPLICABLE LAW

Neither state or federal special education statutes or regulations nor the California Administrative Procedures Act specifically address motions to withdraw complaints before, during, or after the commencement of a due process hearing. However, Code of Civil Procedure, section 581, et seq., addresses such motions in the context of state civil proceedings.¹ Section 581, subdivision (c), states that a plaintiff may dismiss his or her complaint, or any portion of it, with or without prejudice prior to the actual commencement of trial. Section 581, subdivision (e), states that after the actual commencement of a trial, a court will dismiss a complaint, or any portion of it, with prejudice upon a plaintiff's request, unless all parties consent to dismissal without prejudice or unless the court finds good cause for a dismissal without prejudice.

In the instant case, almost four days of hearing had taken place, consisting of the testimony of 12 witnesses. Many of those witnesses were District employees for whom the District had to arrange substitute instructors in order for the witnesses to be able to testify during the school day. The District had expended considerable resources and time in defending the case filed by Student. Therefore, the prejudice to the District weighed heavily in favor of rejecting Student's initial request to dismiss his case without prejudice, which would leave the possibility of Student re-filing a complaint on the same issues, necessitating a new hearing on the matters.

There appear to be no OAH decisions or orders which have directly addressed a party's motion to withdraw its entire case after a hearing has begun and testimony presented. However, there are some analogous situations where OAH has denied a student's motion to withdraw an issue unilaterally after the case had been submitted (*Student v. Moreno Valley*

¹ All further statutory references are to the Code of Civil Procedure.

Unified School District (2009) Cal.Offc.Admin.Hrngs Case No. 2008120285) or, in a case consolidated with a District's cross-filing, permitted a student to withdraw her case on the first day of hearing, but only with prejudice (*Rialto Unified School District v. Student* (2006) Cal.Offc.Admin.Hrngs Case No. 2005090655.) OAH has also issued orders to show cause as to why a case should not be dismissed with prejudice for failure to prosecute. (See, for example, *Student v. Castro Valley Unified School District*, (2011) Cal.Offc.Admin.Hrngs Case No. 2011020888).

As these examples demonstrate, it is appropriate to rely by analogy on Code of Civil Procedure, section 581, subdivision (e), which dictates that a case should be dismissed with prejudice after the commencement of a case unless all parties agree to a dismissal with prejudice or unless there is good cause shown to support a dismissal without prejudice. In this case, the District opposed any dismissal of the case, be it with or without prejudice. In addition, the fact that the case had advanced through four days of testimony of 12 witnesses supports a finding that no good cause was shown to permit a withdrawal without prejudice.

Finally, the District failed to provide convincing support of its position that it would be prejudiced by permitting Student to withdraw his case with prejudice. As the ALJ pointed out, the District was potentially in a more favorable position than it might be following a decision on the merits since that decision might not have been fully or partially in its favor. The issues Student raised were not frivolous. By granting Student's motion to withdraw with prejudice, the issues Student raised in the instant proceeding cannot be re-litigated.

ORDER

Student's motion to withdraw his complaint with prejudice is granted.

Dated: February 10, 2012

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings