

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

LINCOLN UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2012010600

ORDER OF DISMISSAL AFTER
WITHDRAWAL OF DUE PROCESS
HEARING REQUEST

The due process hearing in this matter commenced on May 7, 2012, in Stockton, California, before Administrative Law Judge (ALJ) Clifford H. Woosley, Office of Administrative Hearings (OAH). Father appeared on behalf of Student. Educational advocate, Robert K. Clossen, Ed.D., appeared to assist Father during the hearing.¹ Anne M. Sherlock and Rebecca P. Feil, of Fagen Friedman and Fulfrost, LLP, appeared on behalf of the Lincoln Unified School District (District). Dr. Louise King-Bassett, Director of Special Education for District, was present throughout the proceeding.

FINDINGS

Before opening statements, the receipt of documentary evidence, or the swearing in of a witness, the ALJ discussed the parties' compliance with the prehearing conference (PHC) order with the parties, attorneys, and educational advocate. Based thereon, the ALJ certifies the following factual findings:

- The PHC order instructed the parties to serve their respective tabbed evidence binders upon each other by April 30, 2012. District complied but Father did not do so.
- The PHC order directed the parties to meet and confer for purposes of coordinating witness availability and appearance order. Father did not participate in District's attempts to meet and confer.

¹ Dr. Clossen did not previously appear in this matter on behalf of Student or Father. His appearance at the hearing was unannounced and a surprise to the District and the ALJ.

- The PHC order mandated the parties to serve a final witness list, including anticipated order of testimony and estimated length of examination, upon the other party and on the ALJ, by 1:00 p.m., May 4, 2012. District complied but Father did not do so.
- The ALJ noted all rulings regarding witnesses and evidence would be guided by the issues, as set forth in the PHC order. The ALJ read the issues to the parties. The issues reflected OAH orders on various written motions made by District since the due process complaint's initial filing. Father stated that he was unaware that the issues he asserted in the complaint had been reduced to the issues as stated in the PHC order. Father acknowledged, however, that he had received service of the PHC order. All prior OAH orders regarding District's motions were similarly served upon Father, as reflected in the respective proofs of service.
- Father and Dr. Clossen consulted during a short recess. Thereafter, Father announced the withdrawal of Student's due process petition, with the stated intent of refileing the petition to include additional issues. The ALJ told Father that the District was retaining its rights to seek sanctions and Father acknowledged that he understood. Regardless, Father stated he was withdrawing Student's due process petition.
- The District requested that the ALJ order that the withdrawal be "with prejudice." District sought a ruling that would limit the issues Student might raise in any new due process complaint.
- The ALJ declined District's request that the withdrawal be with prejudice, stating that no witnesses had been sworn, no evidence had been submitted, and no opening statements were made. The ALJ also found that state and federal special education law does not grant him power to unilaterally rule that a student's withdrawal of a due process hearing request would be with prejudice, such that the student would be barred from raising the same issues in any new due process hearing request.

ANALYSIS

Based on the facts above, the matter will be dismissed without prejudice following Father's withdrawal of the due process hearing request before the hearing had begun. Although this matter will not be dismissed "with prejudice," District is not without remedies. Specifically, the District may seek sanctions, as permitted by the California Administrative Procedure Act or other applicable law. Accordingly, District may file a motion for sanctions in this or any further due process hearing request relating to the same issues.

