

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN FRANCISCO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012020234

ORDER TO SHOW CAUSE WHY
CASE SHOULD NOT BE DISMISSED
AND PARTIES ORDERED TO PAY
EXPENSES

On February 7, 2012, Michael A. Zatopa, attorney for Student, filed a Request for Due Process Hearing against the San Francisco Unified School District (District), and served it on Deborah Ungar Ettinger, attorney for the District. On February 8, 2012, the Office of Administrative Hearings (OAH) issued a scheduling order that set the matter for mediation on March 14, 2012, a prehearing conference (PHC) on March 28, 2012, and a due process hearing on April 3, 2012.

The parties subsequently cancelled the March 14, 2012, mediation by informing an OAH mediator that they had reached a settlement and did not need mediation. However, no documents stating that there had been a settlement were filed by either party, and Student did not request a dismissal.

OAH requires a party to file a PHC statement at least three business days prior to the PHC. Here, the parties failed to file a PHC statement for the March 28, 2012 PHC. On March 22, 2012, OAH staff attempted to contact counsel for the parties by telephone in order to inquire about the PHC statements and the status of the matter. Mr. Zatopa was unavailable and his message box was full and could not receive messages. Ms. Ungar Ettinger was also unavailable; OAH staff left a message that she did not acknowledge or return.

On March 23, 2012, Mr. Zatopa informed OAH staff by telephone that the parties had reached a settlement and that he would be sending in a withdrawal of the matter. No withdrawal or request for dismissal was received.

On March 28, 2012, OAH staff again telephoned Mr. Zatopa and left a message inquiring about the status of the matter in light of the impending PHC. No response was received.

On March 28, 2012, the undersigned Administrative Law Judge (ALJ) telephoned Mr. Zatopa to begin the PHC. No one was available to answer the telephone at his office. His

recording stated that he was working at home and checking his messages, but since his mailbox was again full no message could be left.

The undersigned then telephoned Ms. Ungar Ettinger, who was unavailable, and left a message that she was in default of her obligation to appear for the PHC.

As a result of the conduct of counsel for the parties described above, no PHC has been held and the matter remains scheduled for due process hearing on April 3, 2012.

ORDER TO SHOW CAUSE

Under the reauthorized Individuals with Disabilities Education Improvement Act (IDEA 2004), a due process hearing must be conducted and a decision rendered within 45 days following a 30-day resolution period, after receipt of the due process notice, in the absence of an extension. (Ed. Code §§ 56502, subd. (f), and 56505, subd. (f)(3).) Given the short time frames applicable to this case, it is critical that the parties follow orders issued by OAH and participate in advancing the matter to hearing.

The parties are ordered to show cause why the above-captioned case should not be dismissed for their failure to participate, prosecute or advance the case for hearing. **The parties, or their representatives, are ordered to file a written response with OAH by not later than 12:00 p.m. (noon) on April 2, 2012,** by facsimile transmission to (916) 376-6319. **Each party shall also file a PHC statement not later than 12:00 p.m. on April 2, 2012.** The parties shall serve a copy of the response upon each other by facsimile. Student's response shall address why his representative did not appear for the PHC on March 28, 2012, and whether she intends to go forward to a hearing. The District's response shall address why District failed to file a PHC statement, failed to respond to OAH staff's telephone message of March 22, 2012, and failed to appear at the PHC on March 28, 2012.

Under certain circumstances, an administrative law judge presiding over a special education proceeding is authorized to shift expenses from one party to another, or to OAH. (Gov. Code, §§ 11405.80, 11455.30; Cal. Code. Regs., tit. 5, § 3088; see *Wyner ex rel. Wyner v. Manhattan Beach Unified School Dist.* (9th Cir. 2000) 223 F.3d 1026, 1029 ["Clearly, [California Code of Regulations] § 3088 allows a hearing officer to control the proceedings, similar to a trial judge."].) Only the ALJ presiding at the hearing may place expenses at issue. (Cal. Code. Regs., tit. 5, § 3088, subd. (b).) Each party's written responses shall address why OAH should not order the parties to pay OAH's expenses for preparing for and attempting to conduct the March 28, 2012 PHC.

A telephonic status conference and PHC shall take place at 3:00 p.m. on April 2, 2012. OAH will initiate the telephone call to the parties. The parties shall be prepared to discuss the status of the case and whether Student's complaint should be dismissed. The hearing date of April 3, 2012, shall remain on calendar. Should the parties fail, without excuse, to timely file a response and PHC statement as ordered above, or participate in the

telephonic status conference and PHC, OAH may impose sanctions and dismiss this case without further notice.

ORDER

1. An Order to Show Cause as to Why the Matter Should Not be Dismissed and the Parties Ordered to Pay Expenses is hereby issued. Each party shall file a response and PHC statement no later than 12:00 p.m. on April 2, 2012.

2. The parties shall appear at a telephonic status conference and PHC at 3:00 p.m. on April 2, 2012.

3. Should the parties fail, without excuse, to timely file a response and PHC statement as ordered above, or participate in the telephonic status conference and PHC, OAH may impose sanctions and dismiss this case without further notice.

4. The hearing date of April 3, 2012, is confirmed.

Dated: March 28, 2012

/s/

CHARLES MARSON
Administrative Law Judge
Office of Administrative Hearings