

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

RIVERSIDE UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2013020870

ORDER GRANTING MOTION TO
DISMISS STUDENT'S REQUEST FOR
DUE PROCESS HEARING

On March 27, 2013, the parties appeared for a telephonic Status Conference for the expedited due process hearing, which concerned an appeal of District's manifestation determination of January 13, 2013. Parent appeared on behalf of Student (Student). Jack B. Clarke, Jr., Attorney at Law, appeared on behalf of the Riverside Unified School District (District). The Status Conference was recorded.

Student moved to withdraw both the sole expedited issue and the sole non-expedited issue, pertaining to non-compliance with an individualized education program. The District did not object. No testimony was heard or documentary evidence admitted. Student's motion to withdraw and dismiss both the expedited and non-expedited issues were granted.

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.

DISCUSSION

In the instant case, a brief telephonic hearing was conducted on March 25, 2013. However neither the Student or the District provided an opening statement, no testimony was heard, and no documentary evidence was admitted. The trial portion of the due process hearing was set to commence on March 26, 2013. However, on March 26, 2013, Mother submitted a letter to the Office and Administrative Hearings (OAH) which stated that she

was too ill to attend the hearing. Mother also left a message on the OAH settlement line which stated that she wished to withdraw Student's request for due process. The hearing scheduled for March 26 and 27, 2013 did not convene and a telephonic status conference was held on March 27, 2013. During the status conference, Student requested that this matter be withdrawn in full, including both the expedited and non-expedited issues. The District did not object.

Here, because no testimony was heard and no documentary evidence was admitted, Student is entitled to withdraw his case without prejudice. Student's motion is granted and his case is dismissed without prejudice.

ORDER

1. Student's due process hearing request is withdrawn and the expedited proceeding and non-expedited proceeding is dismissed without prejudice.
2. All hearing dates for both the expedited and non-expedited hearings are vacated.

IT IS SO ORDERED.

Dated: April 3, 2013

/s/

PAUL H. KAMOROFF
Administrative Law Judge
Office of Administrative Hearings