

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

ELK GROVE UNIFIED SCHOOL  
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2015010203

AMENDED ORDER DEFERRING  
REQUEST TO WITHDRAW DUE  
PROCESS HEARING REQUEST  
WITHOUT PREJUDICE AND  
SEEKING SUPPLEMENTAL  
INFORMATION<sup>1</sup>

On January 7, 2015, Elk Grove Unified School District filed a due process complaint naming Student as respondent. The matter proceeded to hearing on March 3 and 4, 2015. Documentary evidence and witness testimony were submitted by both sides. The record was left open until March 23, 2015, for the parties to submit written closing briefs. On March 17, 2015, Elk Grove submitted a request to withdraw its due process hearing request without prejudice and requested that the case be closed and no decision issued. Student did not join in the request or submit any additional information.

APPLICABLE LAW

Neither state and federal special education statutes or regulations nor the California Administrative Procedures Act specifically address motions to withdraw complaints after a due process hearing commences. The Code of Civil Procedure, section 581, et seq., addresses such motions in the context of state civil proceedings.<sup>2</sup> Although not binding in special education matters, the Code of Civil Procedure can provide guidance in this situation. Specifically, section 581, subdivision (c), states that a plaintiff may dismiss his or her complaint, or any portion thereof, with or without prejudice prior to the actual trial commencing. Section 581, subdivision (e), states that after a trial commences, a court will dismiss a complaint with prejudice upon a plaintiff's request, unless all parties consent to

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<sup>1</sup> This order supercedes the Order Denying Request to Withdraw Due Process Hearing Request Without Prejudice filed and served earlier today.

<sup>2</sup> All further statutory references are to the Code of Civil Procedure.

dismissal without prejudice or unless the court finds good cause for a dismissal without prejudice.

OAH has previously denied a student's motion to withdraw an issue unilaterally after the case had been submitted (*Student v. Moreno Valley Unified School District* (2009) Cal.Offc.Admin.Hrngs Case No. 2008120285) and, in a case consolidated with a District's request, 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).

## DISCUSSION

As noted above, OAH would typically dismiss a case with prejudice after a hearing commences unless all parties agree to a dismissal without prejudice or unless there is good cause shown to support a dismissal without prejudice. In this case, a full hearing was conducted with documentary evidence and witness testimony being received. The record was held open to permit the parties to submit written closing briefs. Considerable time and resources have been devoted to this matter. Although an agreement among the parties to settle a matter without the need for a decision to be issued is favored, Elk Grove has provided no good cause for the request to withdraw without prejudice, such as a declaration indicating that the parties did in fact agree on this disposition or evidence demonstrating that Student also requests this matter be dismissed without prejudice. Accordingly, the parties will be given until 3:00 p.m. on Friday, March 20, 2015, to submit supplemental information demonstrating good cause supporting the request or reliable information that both parties seek this matter be dismissed without prejudice, along with reasons therefor. If such information is not received, Elk Grove's request to withdraw its case without prejudice will be denied. In the meantime all scheduled dates remain as calendared.

## ORDER

1. Elk Grove's request to withdraw its due process hearing request without prejudice is deferred pending receipt of the supplemental information requested in this Order.
2. The parties may submit supplemental information demonstrating good cause to dismiss this matter without prejudice or reliable information indicating that both parties request this matter be dismissed without prejudice, along with reasons therefore.

3. The supplemental information identified in number 2 above must be filed by 3:00 p.m. on Friday, March 20, 2015.
4. If the supplemental information identified in number 2 above is not timely filed, Elk Grove's request will be denied.

IT IS SO ORDERED.

DATE: March 17, 2015

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JOY REDMON  
Administrative Law Judge  
Office of Administrative Hearings