BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. TORRANCE UNIFIED SCHOOL DISTRICT.	OAH Case No. 2016010810 ORDER DISMISSING CASE WITHOUT PREJUDICE FOR FAILURE TO PROSECUTE

PROCEDURAL BACKGROUND

On January 26, 2016, Parent, on behalf of Student, filed a request for a due process hearing in Spanish against the Torrance Unified School District.

On January 28, 2016, the Office of Administrative Hearings issued and served a scheduling order, translated in Spanish for Parent, setting the prehearing conference for February 26, 2016, at 10:00 a.m., and the due process hearing on March 3, 2016. OAH ordered the parties to file written prehearing conference statements at least three business days prior to the prehearing conference.

On February 24, 2016, District filed a prehearing conference statement. Student did not file a prehearing conference statement.

On February 24, 2016, District requested a continuance of the due process hearing.

On February 26, 2016, Administrative Law Judge Kara Hatfield convened the telephonic prehearing conference at 10:00 a.m. District was represented by counsel. The ALJ called Parent but was unable to reach her. The call went directly to voicemail. The ALJ left a voicemail message, stating that the prehearing conference would be continued to 10:15 a.m. The ALJ telephoned Parent at 10:15 a.m. to convene the prehearing conference, and the call went directly to voicemail. The ALJ left a second message for Parent, stating that she would conduct the prehearing conference without her participation. Parent did not call OAH during the conference.

On February 26, 2016, OAH granted in part, and denied in part, District's request for a continuance, and set the prehearing conference for March 4, 2016, at 3:00 p.m., and the due process hearing for March 15 and 16, 2016. OAH translated the order for Parent, and served it on March 1, 2016.

On March 3, 2016, District filed a motion to dismiss Student's case, because Student did not appear for the February 26, 2016 telephonic prehearing conference, and Student did not serve District a prehearing conference statement for the March 4, 2016 prehearing conference at 3:00 p.m. OAH did not receive any oral or written communications from Student or Parent relating to the March 4, 2016 prehearing conference.

On March 4, 2016, OAH telephoned the parties to inform them it was vacating the prehearing conference, and continuing it to March 18, 2016, and the due process hearing to March 29 and 30, 2016, and would be issuing an Order to Show Cause as to why Student's case should not be dismissed for failure to prosecute it. Since Parent did not answer the call, OAH left a detailed voicemail message in Spanish. Parent subsequently telephoned OAH, and provided a new telephone number where she could be reached for the March 18, 2016 prehearing conference.

On March 7, 2016, ALJ Caroline Zuk issued an Order to Show Cause as to why the case should not be dismissed for failure to participate, prosecute, or advance the matter, because Student could not be reached for the February 26 and March 4, 2016 telephonic prehearing conferences, and Student did not file any prehearing conference statements. The Order required Student to file a prehearing conference statement by the close of business on Tuesday, March 15, 2016, if Student intended to proceed to hearing. OAH translated the Order into Spanish, and served it on Student on March 9, 2016.

On March 18, 2016, the parties appeared for the telephonic prehearing conference. Parent, on behalf of Student, provided adequate justification on the Order to Show Cause based on Parent's explanation of her new telephone number. The parties proceeded with the two-hour prehearing conference, translated into Spanish by a Spanish language interpreter. During the prehearing conference, Student explained that she had not prepared a prehearing conference statement, because she did not receive a form, and did not know how to participate in the due process procedures. The ALJ explained that Student needed to prepare her own prehearing conference statement, and reminded Student to carefully read and comply with the Scheduling Order, translated into Spanish, regarding the procedures to prepare for the due process hearing. During the prehearing conference, the ALJ reviewed the procedures, including timelines, for serving witness lists and proposed exhibits prior to the hearing, and confirmed the parties' contact information. The ALJ encouraged Parent to contact OAH Case Manager Noe Fajaro at (916) 263-0880, if she had questions about the Orders. OAH translated the Order into Spanish, and served it on Student on March 23, 2016.

On March 21, 2016, Student filed proposed exhibits with OAH but there was no proof of service indicating that Student had served District with a copy of her exhibits.

On March 23, 2016, District moved to continue the due process hearing, because Student had not served her witness list or exhibits upon District, and one of District's witnesses was not available. OAH did not receive any response to the motion from Student.

On March 28, 2016, OAH granted District's request for a continuance, and scheduled a follow-up prehearing conference on May 13, 2016, and the due process hearing on May 25 and 26, 2016.

On May 13, 2016, ALJ Zuk attempted to telephone Parent at the last number provided by her to conduct the follow-up, telephonic prehearing conference. A recorded message stated that the telephone number had been disconnected, and was no longer in service. The ALJ proceeded with the prehearing conference with District's counsel. A Spanish language interpreter was available in the event that Parent called in for the conference call. District orally moved for dismissal of Student's case based on Student's failure to appear and advance the matter. The ALJ took District's motion under submission.

On May 16, 2016, ALJ Zuk denied District's motion to dismiss the case but issued an Order to Show Cause to be discussed during a telephonic hearing on May 23, 2016, as to why the matter should not be dismissed for Student's failure to participate, prosecute, or advance the matter. The Order provided that if Student did not appear for the hearing or provide adequate justification on the Order to Show Cause, Student's case would be dismissed without prejudice. OAH translated the Order into Spanish, and served it on Student on May 18, 2016.

On May 23, 2016, ALJ Zuk attempted to telephone Parent at the last number provided by her to conduct the Order to Show Cause hearing. A recorded message stated that the telephone number had been disconnected, and was no longer in service. The ALJ proceeded with the conference call with District's counsel. A Spanish language interpreter was available in the event that Parent called in for the conference call. Student did not file any written response to the Order to Show Cause or contact OAH by phone prior, during or after the May 23, 2016 conference call. District orally moved for dismissal of Student's case based on Student's failure to appear and advance the matter.

APPLICABLE LAW AND DISCUSSION

Under the reauthorized Individuals with Disabilities Education Improvement Act, 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).)

No one on behalf of Student filed any response in this matter addressing why Student failed to serve her witness list and exhibits on District, why Parent could not be contacted by telephone on May 13 and 23, 2016, why Student did not file any response to the second Order to Show Cause, and why Parent or anyone else representing Student failed to appear for the Order to Show Cause hearing on May 23, 2016.

Given the short time frames applicable to due process hearings, it is important for all parties to participate in the hearing process, and comply with OAH's Orders. Since Student filed this case, it is her burden to prove the issues she has raised. Student has failed to file

any documentation, indicating that she intends to proceed with this case, or showing that the case has been resolved. Student was given a second opportunity to clarify her intentions at the May 23, 2016 hearing on the Order to Show Cause, but failed to appear. Under these circumstances, dismissal without prejudice is warranted.

ORDER

OAH Case No. 2016010810 is dismissed without prejudice. All hearing dates are vacated.

DATE: May 25, 2016

DocuSigned by:

Caroline Zuk

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CAROLINE A. ZUK
Administrative Law Judge
Office of Administrative Hearings