

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LAKESIDE UNION SCHOOL DISTRICT.

OAH Case No. 2016030643

ORDER DISMISSING STUDENT'S
COMPLAINT WITHOUT PREJUDICE

On July 18, 2016, OAH issued an Order to Show Cause Why Student's Case Should Not Be Dismissed for Student's failure to file a prehearing conference statement or participate in the July 15, 2016 PHC in this matter. The Order to Show Cause set a telephonic hearing on the matter for July 22, 2015 at 10:00 a.m.

On July 22, 2016, Administrative Law Judge Robert G. Martin held a telephonic hearing on the Order to Show Cause. Attempts to reach Parent on the record at the hearing's scheduled date and time were unsuccessful, and messages were left for Parent at both telephone numbers on file. When Parent could not be reached, the hearing on the order to show cause proceeded with Kyle Holmes, Attorney at Law, appearing on behalf of respondents Lakeside Union School District and Kern County Superintendent of Schools.

APPLICABLE LAW

The IDEA requires speedy resolution of complaints. Parties must request a hearing within two years of the date they knew or should have known of the alleged wrongful action. (Code Regs § 300.511(e).) The parties must be given an opportunity for an impartial due process hearing, Code Reg§ 300.511(a). Subject to the 30 day stay after the complaint, or amended complaint if filed, and continuances based upon good cause, a final decision must be reached and mailed to the parties within forty-five days. (Code Regs §300.515).

Although it is preferable to resolve actions on their merits (Cal. Civ. Proc. Code § 583.130.), dismissal without prejudice is warranted where, among other things, a party fails to proceed with due diligence.

DISCUSSION

Student filed this matter on March 9, 2016. The matter was continued on April 21, 2016 on the joint request of the parties, and again at the May 16, 2016 PHC at Student's request, made on grounds that the parties were diligently working towards a settlement which

completion required, and had been delayed by, the need to coordinate with at least three third parties to arrive at the final terms of a settlement agreement.

Student failed to file any PHC statement in this matter. OAH staff left a message for Parent on July 14, 2016, reminding Parent of the July 15, 2016 PHC and the need to file a PHC statement. On July 15, 2016, ALJ Martin attempted to reach Parent on the record at the PHC's scheduled time of 10:00 a.m., but was unsuccessful. The ALJ continued the PHC to 11:00 a.m., and left messages for Parent at both telephone numbers on file. When Parent could not be reached on the record at 11:00 a.m., the ALJ proceeded with the PHC with respondents, only.

On July 18, 2015, Student was ordered to show cause why this matter should not be dismissed for Student's failure to file a PHC statement or participate in the PHC of this matter. Student was ordered to submit to OAH by 5:00 p.m. on Wednesday, July 20, 2016, a statement why OAH should not dismiss this matter for failing to participate in the PHC, and advised that failure to submit such a response would be cause for the dismissal of this matter. Student was also ordered to submit a PHC statement and fully comply with all terms of the PHC order issued in this matter following the July 15, 2016 PHC, if Student wished to proceed with this matter.

Student did not submit a statement why OAH should not dismiss this matter, nor did Student file a PHC statement as ordered. On July 21, 2016, respondents' counsel filed a declaration under penalty of perjury declaring that counsel had reached Parent by telephone on July 21, 2016 in order to meet and confer on the schedule of witnesses for hearing, as ordered in OAH's PHC order issued July 18, 2016. Respondent's counsel declared that Parent stated that he intended to withdraw Student's case and hire counsel to handle the matter.

Student, through Parent, has failed to file a prehearing conference statement, participate in the July 15, 2016 PHC, and diligently participate in, prosecute, or advance his complaint. Accordingly, all dates are vacated and Student's case is dismissed, without prejudice.

IT IS SO ORDERED

DATE: July 25, 2016

DocuSigned by:

ROBERT G. MARTIN
Administrative Law Judge
Office of Administrative Hearings