

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2009020337

ORDER TO SHOW CAUSE
REGARDING DISMISSAL OF
COMPLAINT AND SETTING
TELEPHONIC STATUS
CONFERENCE

On February 9, 2009, Parent filed a request for a due process hearing (complaint) with Office of Administrative Hearings (OAH) on behalf of Student, naming the Los Angeles Unified School District (District). On February 11, 2009, OAH issued a scheduling order, setting this matter for a voluntary mediation on March 18, 2009, a telephonic Prehearing Conference on April 10, 2009, and a hearing on April 15, 2009. OAH served Parent with a copy of a continuance form along with the scheduling order. The parties were also ordered to file written Prehearing Conference statements at least three business days prior to the Prehearing Conference, disclosing the witnesses and documents the parties intend to present at the hearing. On March 18, 2009, the District attended the mediation but the Parent did not appear. On April 6, 2009, the District filed a Prehearing Conference statement. Parent has not filed a Prehearing Conference statement as required by OAH. On March 24 and April 8, 2009, OAH staff called Parent's home and were informed that Parent was out of the country caring for a sick relative in Mexico, and that it was unknown when she would return. No one on Student's behalf has submitted a request for a continuance to OAH.

On April 10, 2009, a Prehearing Conference in this matter was held telephonically before Administrative Law Judge (ALJ) Deidre L. Johnson. Devora Navera, Assistant General Counsel, appeared for the District. ALJ Johnson called Parent at her telephone number of record, and a voice message system answered the call. The ALJ left a telephone message indicating that the conference was being conducted and requested Parent to call OAH immediately. Parent did not return the call. The District has represented that it has not heard from Parent or any other representative of Student as to their intentions.

Student and Parent's failure to request a continuance of the hearing and Prehearing Conference, file a Prehearing Conference statement, or participate in the Prehearing Conference suggests that Student does not intend to proceed to hearing. Since Parent is out of the country, she should be given the opportunity to establish if she intends to go forward with this case. However, it is unreasonable for the District to incur the time and expenses of hearing preparation, including the preparation of numerous witnesses and documentary exhibits, if Student does not intend to proceed. Accordingly, this order is issued, the hearing

date of April 15, 2009 is hereby vacated, and the due process hearing is continued pending further order from OAH.

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. (See Ed. Code §§ 56502, subd. (f), and 56505, subd. (f)(3).) Given the short time frames applicable to this case, it is critical that Student or his representative follow orders issued by OAH and participate in advancing the matter to hearing.

Student is ordered to show cause why the above captioned case should not be dismissed for his failure to participate, prosecute or advance the case for hearing. **Parent, or a representative for Student, is ordered to file a written response with OAH by not later than 5:00 p.m. on April 23, 2009,** by facsimile transmission to (916) 376-6319. Student shall serve a copy of the response on Ms. Navera at the Office of General Counsel for the District, by facsimile transmission to (213) 241-3311. Student's response shall address why his representative did not appear for the conference call, and whether he intends to go forward to a hearing, and include a telephone number for the telephonic conference ordered below. District may file a reply by 5:00 p.m. on April 27, 2009.

A telephonic status conference shall take place at 10:00 a.m. on Wednesday April 29, 2009. OAH shall 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.

Should Student, Parent or a representative fail, without excuse, to timely file a response as ordered above, or participate in the telephonic status conference, OAH may dismiss this case without further notice. If Student files a response which establishes good cause why Parent or a representative did not appear for the above telephonic conference, and that Student intends to proceed to hearing, OAH will issue an order setting this matter for hearing.¹ If Student fails to show good cause in his response, the OAH will dismiss Student's complaint. If Student has abandoned the case and no longer wishes to pursue it, he shall file a notice of withdrawal with OAH.

IT IS SO ORDERED.

Dated: April 15, 2009

/s/

DEIDRE L. JOHNSON
Administrative Law Judge
Office of Administrative Hearings

¹ Pursuant to the District's prehearing conference statement, three days of hearing are required in this case.