

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

v.

LONG BEACH UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2010090508

ORDER TO SHOW CAUSE RE:  
DISMISSAL AND CONTINUANCE OF  
PREHEARING CONFERENCE AND  
DUE PROCESS HEARING

TELEPHONIC OSC AND PHC: APRIL  
27, 2011 AT 1:30 P.M.  
DUE PROCESS HEARING: MAY 2-3,  
2011

On April 20, 2011, Administrative Law Judge Eileen M. Cohn (ALJ Cohn), convened a telephonic prehearing conference (PHC). Hans Gillinger and Karen J. Manabo, attorneys at law, appeared on behalf of District. Student did not appear. The PHC was recorded.

The Order to Show Cause Re: Dismissal and continuance of the PHC and due process hearing are made with reference to the following facts.

On September 10, 2010, Student filed a due process hearing request (complaint), naming the Long Beach Unified School District (District) as respondent. Student is over 18 years of age and his participation in the due process hearing is required. The parties initially requested that OAH advance the due process hearing dates, and based upon their request, OAH advanced the PHC and due process hearing dates. On October 14, 2010, OAH granted the parties second scheduling request to continue the PHC and due process hearing from the advanced dates. Based upon the stipulation of the parties, OAH set the PHC for February 21, 2011, and the due process hearing for February 28 through March 4, 2011.

On December 20, 2010, Student's counsel withdrew. As a result of the withdrawal of Student's counsel, Student is representing himself. In former counsel's notification to OAH, he represented that he provided Student with the scheduling order and the relevant dates and deadlines in this matter. The attorney's notice of withdrawal also directed OAH to send all future documents to Student to the same address set forth in Student's complaint, which is the address of Student's parents. The notice of withdrawal did not include an updated phone number for Student. OAH has on file the phone number for Student's parents.

On February 16, 2011, the parties filed their third joint request for a new scheduling order, requesting a continuance of the PHC and due process hearing. District filed the moving papers on behalf of the parties which contained District counsel's declaration of her discussions with Student. Counsel stated in her declaration that she had spoken with Student on February 15, 2011, and he agreed to the continuance. She stated that Student did not have

a fax machine so she sent the stipulation for him to sign by courier. The stipulation was delivered to his parent's address, the same address set forth in Student's complaint and his former counsel's notice of withdrawal. Student signed the stipulation and returned it to District for inclusion in the documents provided to OAH as part of their joint request for a continuance.

On February 16, 2011, OAH granted the requested continuance and issued a scheduling order setting the PHC for April 20, 2011, at 1:30 p.m., and the due process hearing for April 27-28, 2011, and May 2-3, 2011. OAH served Student the Order by mail.

On April 13, 2010, District filed a unilateral request for continuance of the due process hearing. According to District, at the time the previous request for continuance was made, its counsel was unaware that the District's Spring break was scheduled for April 15 - 29, 2011. District personnel and district facilities are unavailable during that time. District requests that the due process hearing request be continued to May 2-5, 2011. District served the request by mail to Student.

Prior to filing its request for continuance, District's counsel attempted to meet and confer, as she had in the past, with Student. District's counsel contacted Student, as she had previously done, at his parent's phone number, but was unsuccessful. Counsel left a detailed voice mail on parent's phone machine, and sent correspondence memorializing the voice mail to Student.

On April 15, 2011, District filed and served Student its PHC statement. District's PHC statement set forth the date and time of the PHC. Student did not file a PHC statement.

On April 18, 2011, OAH clerk, Sonia Hwang, attempted to contact Student by telephone, calling the parent's phone number, to remind Student of his obligation to file a PHC statement. Ms. Hwang spoke to parent and requested that parent provide her with Student's contact information. Parent refused to disclose any information about Student.

On April 20, 2011, ALJ Cohn convened the telephonic PHC. She called parent's phone number twice and left voice mail messages for Student advising him of the PHC, providing him with name of the OAH clerk assigned to the matter and the OAH phone number so that he could contact the clerk regarding the PHC and due process hearing. She also advised him that she would be continuing the PHC and scheduling an OSC Re: Dismissal for April 27, 2011 at 1:30 p.m. She advised him that she would be sending him an Order in the mail that would provide details of the schedule and that he should make sure to read it. District's counsel confirmed that the phone number provided to OAH was the parent's phone number. District advised the ALJ that Student had at one time a cell phone, but that number had been disconnected.

At the PHC, the ALJ granted District's request for a continuance of the due process hearing and set the hearing for Tuesday, May 2, 2011 and Wednesday, May 3, 2011. District reserved its right to object to exhibits produced by Student less than five days before the

hearing. The ALJ also continued the telephonic PHC to April 27, 2011, at 1:30 p.m. to allow Student more time to appear. The ALJ advised District that based upon Student's failure to appear at the PHC, she was setting a telephonic hearing for an Order to Show Cause (OSC) re: Dismissal, on April 27, 2011, at 1:30 p.m. Should the Student appear and provide good cause for moving the matter forward to hearing, the continued PHC would proceed at that time.

District inquired about the status of its motion for security at the hearing. The ALJ informed District that the OAH Presiding ALJ and the Van Nuys ALJ would be handling the request, and that the security arrangements would be confirmed after the OSC Re: Dismissal is decided on April 27, 2011. The ALJ notified District that she did not review security requests as the requests contained information not material to the issues in the hearing, unless she was advised that she needed to do so for her personal protection.

District informed the ALJ that it had been in contact with Student's former legal guardian and was advised that Student was incarcerated, possibly at Los Padrinos. District asked whether OAH would hold the hearing at Los Padrinos and the ALJ stated that OAH would move the hearing to where Student is incarcerated if District would confirm Student's whereabouts and inquire as to whether appropriate arrangements could be made for the hearing. District stated that it would make the necessary inquiries to ascertain whether a hearing room and security by prison guards could be provided at the location where Student is incarcerated.

Based upon the foregoing facts, the ALJ issues the following Order.

### ORDER

1. District's request for continuance is granted for good cause. The current hearing dates are vacated, a continued telephonic PHC shall be held on April 27, 2011 at 1:30 p.m., and the due process hearing is continued to May 2 and 3, 2011.
2. Student shall provide OAH with his current phone number so that he can participate in the PHC. Student shall provide OAH with his current address. Student shall notify OAH upon receipt of this Order whether he wishes to withdraw his complaint without prejudice, or whether he intends to proceed with the due process hearing. Student shall contact OAH at 916-263-0880 and speak with Raymond Estey, or another available clerk.
3. As soon as District becomes aware of Student's current mailing address and phone number it shall provide it to OAH.
4. In view of Student's failure to participate in the PHC, by failing to file a PHC statement and to appear at the PHC, **Student is ordered to show cause, at a telephonic**

hearing on Wednesday, April 27, 2011, at 1:30 p.m., as to why this matter should not be dismissed for failure to participate, prosecute, or advance the matter. Should Student provide adequate justification at the hearing on the order to show cause, the PHC will proceed immediately after the OSC is heard. During the continued PHC Student must be prepared to discuss the issues, witnesses and documents that he intends to use at the due process hearing.

5. If Student fails to appear at the telephonic hearing on April 27, 2011, at 1:30 p.m., or appears, and fails to provide adequate justification why the case should not be dismissed for failure to participate, prosecute, or advance the matter, the matter shall be dismissed without prejudice and the hearing dates vacated.

Dated: April 21, 2011

/s/

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EILEEN M. COHN  
Administrative Law Judge  
Office of Administrative Hearings