

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. 2011031494

ORDER DISMISSING COMPLAINT

On March 29, 2011, Student filed a Due Process Hearing Request (complaint) naming the Los Angeles Unified School District (District). OAH issued a scheduling order setting Mediation on May 3, 2011, at 9:00 a.m.; Prehearing Conference (PHC) on May 18, 2011, at 10:00 a.m.; and Due Process Hearing on May 25, 2011, at 9:30 a.m. Neither District nor Student went forward with the mediation.

Student's PHC statement was due on May 13, 2011. Student did not file a PHC statement and did not participate in the PHC On May 18, 2011. As a result OAH issued an order granting a joint request to continue the mediation, prehearing conference and hearing dates as follows: Mediation on June 21, 2011 at 9:00 a.m.; PHC on July 11, 2011 at 1:30 p.m.; and Due Process Hearing on July 19-21, 2011 at 9:30 a.m.

Student did not appear for mediation on June 21, 2011. Student's PHC statement was due on July 6, 2011, but Student did not file a PHC statement. The PHC was held on July 11, 2011 at 1:30 p.m. District appeared but Student failed to appear. Immediately following the PHC OAH issued an Order to Show Cause Why Student's Complaint Should not Be Dismissed. Student was ordered to respond to the Order, and to show cause in a telephonic conference at 10:00 a.m. on July 18, 2011, why the above captioned matter should not be dismissed for Student's failure to participate, prosecute or advance his request for a due process hearing. The Order to Show Cause was served on all parties on July 12, 2011 at 7:34 a.m.¹

On July 18, 2011, the Order to Show Cause conference was held before Administrative Law Judge Stella L. Owens-Murrell (ALJ) via a telephone conference initiated from OAH in Van Nuys, California, beginning at 10:00 a.m. Julie Hall appeared on behalf of District. Student failed to appear. ALJ Owens-Murrell attempted to contact Student's mother (Parent) by calling Parent's telephone number of record with OAH. The ALJ was connected to a voice mail recording, no one answered the phone, there was no

¹ The order was served on Student's parent at her address of record in Los Angeles

answering message, and there was no ability to leave a message. The conference went forward without Parent's participation.

APPLICABLE LAW AND DISCUSSION

No statute or regulation governs the dismissal of a special education due process hearing request due to failure of the petitioning party to participate in or prosecute his or her case. California Code of Civil Procedure section 583.410 provides guidance by analogy, in that it provides for discretionary dismissal of a court case if it is not prosecuted to trial or resolution within two years. While not directly applicable, it does show that a party seeking a remedy in court should be diligent in prosecuting the action, or suffer the consequence of dismissal after passage of time.

Under the reauthorized Individuals with Disabilities Education Improvement Act (IDEA 2004), a 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 participate in advancing the matter to hearing.

Student was encouraged by the Order to Show Cause to participate and to offer excusable reasons for past nonparticipation. Student did not come forward and establish good cause for failing to participate in advancing his case to hearing. Based upon the foregoing facts the case is dismissed without prejudice. All dates are ordered vacated and the case closed.

IT IS SO ORDERED.

Dated: July 18, 2011

/s/

STELLA OWENS-MURRELL
Administrative Law Judge
Office of Administrative Hearings