

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LINCOLN UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2011061010

ORDER DENYING MOTION TO
DISMISS

On June 21, 2011, Parent, on behalf of Student, filed a Request for Due Process Hearing¹ (complaint) naming the Lincoln Unified School District (District). The Office of Administrative Hearings (OAH) scheduled an expedited hearing and an un-expedited hearing. The expedited hearing is scheduled to start on July 19, 2011.

On July 15, 2011, District filed a motion to dismiss the expedited hearing. District asserts that Student failed to prosecute his complaint by failing to file a prehearing conference (PHC) statement, and failing to provide a witness list and exchange evidence within the statutory time frame. OAH did not receive a response from Parent to District's motion to dismiss.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to “ensure that all children with disabilities have available to them a free appropriate public education” (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint “with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.” (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].)

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 United States Code section 1415(b)(7)(A).

Education Code section 56505, subdivision (e) (7), provides for disclosure of witnesses and exhibits “at least” five business days prior to the hearing.

DISCUSSION

In its motion, District requests that Student’s expedited complaint be dismissed due to a failure to prosecute. Student did not file a PHC listing his witnesses and exhibits for the PHC on July 11, 2011. At the PHC, the undersigned administrative law judge verbally reminded the parties to exchange witness lists and exhibits by 5:00 p.m. on July 12, 2011, in compliance with Education Code section 56505, subdivision (e)(7). This requirement for timely disclosure of witnesses and exhibits was also memorialized in the ALJ’s Order Following Prehearing Conference of July 12, 2011.

District contends that Student’s failure to comply with the procedural requirements by failing to file a PHC statement and failing to provide a witness list and exchange evidence within the statutory time frame, have prejudiced District in preparing its defense.

While Student has not filed a PHC statement and has not timely served a witness list or documentary evidence on District, Parent attended the PHC and there is no indication that Parent will not appear at the hearing set for July 19, 2011. District has not established that Student has failed to prosecute the matter, only that Student has failed to comply with the requirements of Education Code section 56505, subdivision (e)(7). While these are serious deficiencies, they do not rise to the level of warranting a dismissal, at this time.

These deficiencies can be appropriately addressed at hearing. Parties can raise objections to evidence or witnesses that were previously undisclosed. Parties can request additional time or a continuance to review previously undisclosed evidence or witnesses. The administrative law judge may use a number of progressive remedies to address these issues, including excluding evidence and witnesses. Accordingly, the motion is denied. All dates currently set in this matter are confirmed.

ORDER

District’s Motion to Dismiss is denied. The matter shall proceed as scheduled.

Dated: July 18, 2011

/s/

TROY K. TAIRA
Administrative Law Judge
Office of Administrative Hearings