

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CAPISTRANO UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2012020302

ORDER DENYING SANCTIONS,
VACATING ORDER TO SHOW
CAUSE AND DISMISSING MATTER

On March 16, 2012, the Office of Administrative Hearings (OAH) issued an Order to Show Cause (OSC) why sanctions should not be imposed and Student, or counsel for Student, ordered to pay expenses. The OSC was based upon Student's misrepresentation that Parent signed an assessment plan as of March 9, 2012; Student's failure to timely submit the signed assessment plan or request a continuance of the hearing date resulting in OAH sending an ALJ to the hearing; and, Student's failure to appear at hearing. Ms. Ortega filed a written response, with declarations under penalty of perjury, on March 26, 2012, explaining that her personal illness and receipt of upsetting medical news, miscommunication, and the naiveté of her office staff resulted in a delay in obtaining the signed assessment plan which would have enabled the District to withdraw the case prior to hearing. OAH did not receive a response from the Capistrano Unified School District (District).

The ALJ has the ability, and the responsibility, to control due process proceedings under the Individuals with Disabilities Act (IDEA) similar to those in a civil or criminal action before other tribunals. OAH's policies regarding notification of settlements and requests for continuances, as well as the obligation of counsel to appear for all calendared matters is well known to Ms. Ortega as she has practiced before OAH for some time. These procedures are in place to ensure that cases are timely calendared, continuances are properly granted and OAH can ensure that cases will be processed under the time lines set out by the IDEA. The procedures are designed to protect the rights of both the child and the public education agency. When the procedures are not followed, the impact upon OAH and the parties' rights can be significant. This matter resulted in wasted time and resources not only for this tribunal but for the District as well.

Ms. Ortega accepts responsibility for not providing specific instructions to her staff regarding the need to obtain the signed assessment plan and to attach this plan to her letter of March 9, 2012, requesting that the hearing be vacated. The letter was filed with OAH and

faxed to the District on March 9, 2012, without the signed assessment plan. Ms. Ortega indicates that this matter was not handled to the standards she would have maintained had she been physically able and present to ensure the same. She assumed, in error, that her office staff obtained and provided the signed plan, that the matter was settled, and that the hearing date was vacated. Ms. Ortega's conduct fell below that expected of an attorney. However, the failure of Ms. Ortega to ensure an appropriate closure to this matter is excusable in light of her medical issues.

OAH has determined that this matter remained on calendar for hearing due to an unfortunate oversight by Student's counsel in not timely obtaining a signed assessment plan from Parent or seeking a continuance. This oversight was not the result of bad faith or frivolous acts meant to cause unnecessary delay. Therefore, sanctions are not warranted. Accordingly, the OSC regarding Sanctions is vacated. All pending dates and appearances are vacated.

On March 12, 2012, District withdrew its request for hearing. This matter is hereby dismissed.

IT IS SO ORDERED.

Dated: March 29, 2012

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings