

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CHINO VALLEY UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2013050898

ORDER GRANTING STUDENT'S
MOTION TO WITHDRAW
COMPLAINT

The due process hearing in this case convened on October 3, 4 and 8, 2013, before Administrative Law Judge (ALJ) Paul H. Kamoroff, from the Office of Administrative Hearings (OAH), State of California, in Van Nuys, California.

Tania L. Whiteleather, Attorney at Law appeared on behalf of Student. Punam Grewal, Attorney at Law, also appeared on behalf of Student. Marsha Johnson, law clerk, attended the hearing on October 3 and 4, 2013. Student's mother (Mother) attended each day of the hearing.

Adam J. Newman, Attorney at Law, represented the Chino Valley Unified School District (District). Anne Ingulsrud, District Director of Special Education, and Amy Foody, West End Special Education Local Plan Area Program Manager, attended each day of the hearing.

On October 8, 2013, Student, through her counsel, requested to withdraw the sole issue remaining in her complaint with prejudice, through the date the complaint was filed, May 22, 2013. The District, through counsel, did not oppose Student's request.

APPLICABLE LAW

Neither state or federal special education statutes or regulations nor the California Administrative Procedures Act specifically address motions to withdraw complaints be it before, during, or after the commencement of a due process hearing. However, Code of Civil Procedure, section 581, et seq., addresses such motions in the context of state civil proceedings.¹ Section 581, subdivision (c), states that a plaintiff may dismiss his or her complaint, or any portion of it, with or without prejudice prior to the actual commencement

¹ All further statutory references are to the Code of Civil Procedure.

of trial. Section 581, subdivision (e), states that after the actual commencement of a trial, a court will dismiss a complaint, or any portion of it, with prejudice upon a plaintiff's request, unless all parties consent to dismissal without prejudice or unless the court finds good cause for a dismissal without prejudice.

DISCUSSION

In the instant case, the sole issue to be determined is whether the District denied Student a free appropriate public education, within the statute of limitations, by failing to provide placement in a residential treatment center.² By granting Student's motion to withdraw with prejudice, this issue that Student raised in the instant proceeding cannot be re-litigated through May 22, 2013, the date she filed her complaint for due process.

At the time of Student's request to withdraw, two full days of hearing had taken place, consisting of the testimony of two witnesses. The District had expended considerable resources and time in defending the case filed by Student. Therefore, the prejudice to the District weighs heavily in favor of granting Student's request to dismiss her case with prejudice, which would negate the possibility of Student re-filing a complaint on the same issue, necessitating a new hearing on this matter. Accordingly, Student's request is granted.

ORDER

Student's motion to withdraw her sole issue with prejudice is granted.

IT IS SO ORDERED.

Dated: October 09, 2013

/s/

PAUL H. KAMOROFF
Administrative Law Judge
Office of Administrative Hearings

² Student withdrew issues 1, 2, 4, 5, and 6 from her complaint as of the prehearing conference held on September 23, 2013. These issues are therefore not subject to this Order.