

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SCHOOL OF UNLIMITED LEARNING  
AND FRESNO UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2013120568

ORDER TO SHOW CAUSE WHY  
EXPEDITED CASE SHOULD NOT BE  
DISMISSED AND ORDER  
CONTINUING EXPEDITED  
PREHEARING CONFERENCE ONLY

On December 17, 2013, Student filed a request for an expedited due process hearing (complaint) in this matter against the School of Unlimited Learning and Fresno Unified School District (District). By an amended scheduling order dated December 27, 2013, the Office of Administrative Hearings (OAH) set dual hearing dates for: (a) an expedited hearing regarding Student's disciplinary issues on February 4, 5, and 6, 2014, with a telephonic prehearing conference on January 27, 2014; and (b) a regular hearing regarding Student's issues claiming he was denied a free appropriate public education (FAPE) beginning on February 11, 2014, with a telephonic prehearing conference on February 3, 2014. OAH also ordered the parties to file written prehearing conference statements at least three business days prior to each prehearing conference.

On January 27, 2013, Administrative Law Judge (ALJ) Deidre L. Johnson convened the mandatory prehearing conference for Student's expedited case. Attorney Sang-Jin Nam appeared for District. No one appeared for Student. In addition, Student did not file a prehearing conference statement. The ALJ called Parent but was unable to reach her. The telephone number provided on Student's complaint was no longer in service. The ALJ telephoned Parent at a second number provided by District, left a message and continued the conference for half an hour. The ALJ convened the conference and left a second message for Parent that an order would issue for Student to show cause why Student's case should not be dismissed. Parent did not call OAH at any time during the conference.

State law provides that a due process hearing, based on problems amounting to a denial of a free appropriate public education (FAPE) in special education, may be continued on a showing of good cause. (Ed. Code § 56505(f).) However, the federal Individuals with Disabilities in Education Act (IDEA) requires an expedited hearing in student discipline appeal cases. (20 U.S.C. § 1415(k)(4)(B).) A due process hearing based on a parent's appeal of a disciplinary "change in placement," or a "manifestation determination" (whether

conduct to be disciplined arises from a disability), must be heard within certain time limits. The expedited hearing on the disciplinary appeal must take place within 20 school days of the date the hearing is requested, and the decision must issue within 10 school days of the hearing. (20 U.S.C. § 1415(k)(4)(B).)

Student's failure to participate in the prehearing preparation process suggests that Student does not intend to proceed to the expedited hearing. It is unreasonable for District to incur the time and expenses of hearing preparation if Student does not intend to proceed. In addition, OAH may not continue the expedited hearing because of the strict time limits. However, in the afternoon of January 27, 2014, Student filed a motion to amend her complaint and a motion to compel the production of documents. It is not clear whether Student's motions address the expedited disciplinary case or her FAPE case. In addition, District has the right to file responses to the motions. Therefore, the ALJ issues the following Order:

1. **Order to Show Cause: A telephonic Order to Show Cause re Dismissal conference is set for Friday, January 31, 2014, at 1:00 p.m.** Both parties are ordered to appear. At that time, Student may show cause, if any, why the complaint should not be dismissed for failure to participate in and prosecute her case. OAH will initiate the telephone call to convene the conference. If Student fails to appear, then her complaint will be dismissed for failure to participate in and prosecute this matter.

2. **Continuance of Prehearing Conference:** The prehearing conference for the expedited hearing is continued to **Friday, January 31, 2014, at 1:00 p.m.**, concurrently with the Order to Show Cause. Student's motions will be addressed during the conference. **If Student intends to participate in and advance her expedited case to hearing, Student must file a prehearing conference statement with OAH (containing the information ordered in the OAH scheduling order) and serve it on the District no later than 11:00 a.m. on Friday, January 31, 2014.**

3. Student's expedited hearing dates remain as scheduled. All prehearing conference and hearing dates for Student's FAPE case remain as scheduled. Student remains obligated to also file a prehearing conference statement for her FAPE case.

IT IS SO ORDERED.

Dated: January 27, 2014

/s/

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DEIDRE L. JOHNSON  
Administrative Law Judge  
Office of Administrative Hearings