

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

v.

LINCOLN UNIFIED SCHOOL DISTRICT.

OAH Case No. 2014071052

ORDER OF DISMISSAL

On July 28, 2014, Student filed a request for due process with the Office of Administrative Hearings, State of California, naming the Lincoln Unified School District. A scheduling order was issued on July 29, 2014, setting the prehearing conference for September 8, 2014, and the initial hearing date for September 16, 2014. The scheduling order also set out various timelines and requirements including filing a prehearing conference statement with both OAH and the opposing party three business days prior to the prehearing conference.¹

On August 20, 2014, Lincoln filed a motion to continue the prehearing conference and hearing dates, because Lincoln and Father, who holds Student's educational rights and represents Student in this matter, were scheduled to participate in a due process hearing for Student's sibling on the same dates. Student opposed the continuance because he wanted to wait until after the parties had an opportunity to mediate prior to continuing the matter. The parties participated in mediation on August 27, 2014, which did not result in a settlement. On August 29, 2014, the motion to continue was granted and a telephonic prehearing conference was scheduled for November 21, 2014, and the hearing was scheduled to begin on December 2, 2014.

Lincoln timely filed a prehearing conference statement on November 18, 2014. No prehearing conference statement was filed by Student. At 10:00 a.m. on November 21, 2014, the prehearing conference was convened by Administrative Law Judge Charles Marson. Student exercised his peremptory challenge and the prehearing conference was assigned to the undersigned ALJ and rescheduled for 1:00 p.m.

¹ This is the seventh due process case involving Student since 2009. Student's sibling has at least five due process cases pending since 2012. Father has been a participant or represented both Student and his brother in all of these cases. Father is familiar with OAH procedures including prehearing conference and motion practice requirements.

On November 21, 2014, when the undersigned attempted to convene the PHC, Parent did not answer his telephone at 1:00 p.m., 1:05 p.m. and 1:30 p.m. and the voicemail box was full. Parent did not contact OAH and ask for a continuance of the PHC. Student failed to file a prehearing conference statement and failed to appear at the PHC. Student did not ask for a continuance nor was any continuance granted.

On November 24, 2014, an order to show cause why the matter should not be dismissed for failure to prosecute was issued. The order to show cause why the matter should not be dismissed for failure to participate, prosecute or advance the case for hearing required that Parent, or other representative, file a written response with OAH by no later than 5:00 p.m. on December 1, 2014. In the response, Student was to address why his representative did not appear for the telephonic prehearing conference on November 21, 2014, and whether he intends to go forward to hearing. Student was also ordered to file a prehearing conference statement at that time.

At 5:01 p.m. on December 1, 2014, Parent filed a document with OAH. This document contained the following statements : “I would like and I am motioning OAF for extra time to respond to your order to show cause. I am also motioning for oral discussion to my response. I request that you read his brothers case [Name of Brother] order to show cause response. The reason is the same. Off work due to medical.”

APPLICABLE LAW AND DISCUSSION

Under the reauthorized Individuals with Disabilities Education Improvement Act (IDEA 2004), a due process 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. (Ed. Code §§ 56502, subd. (f), and 56505, subd. (f)(3).)

No one on behalf of Student filed any response in this matter addressing why Student’s representative did not appear for the telephonic prehearing conference on November 21, 2014. No prehearing conference statement was filed.

At exactly the deadline for the response, Parent instead faxed a request to extend time to respond to the order to show cause. However, no explanation was given as to why the request for an extension of time was needed and why the request was not made in time for it to be ruled upon before the deadline. Unless and until an extension is granted, the deadline remained 5:00 p.m. for a response and prehearing conference statement. No good cause was established for an extension of time to respond to the order to show cause. The order to show cause did not allow for oral argument, only a written response and Father’s request for oral argument was not supported by any cause and is therefore denied.

Further, although pleadings filed in Student’s sibling’s case are not a part of the record in this case, the response to the order to show cause filed in that case was reviewed as requested. It does not constitute the required response in this case. First, it was not filed in this case. Second, on November 26, 2014, Parent filed a 14 page response to the order to

show cause in the other matter, which was issued for reasons other than the order to show cause in this matter. Nowhere in that response does Parent specifically address why he did not appear for the telephonic prehearing conference in this matter on November 21, 2014, and there was no prehearing conference statement for this matter attached. Although some unverified doctors' notes were attached to the response and a separate doctors' note was sent to OAH, these notes excused Parent from work and said nothing about not being able to appear in front of OAH. More importantly, there was no declaration under penalty of perjury accompanying the response or reasons given for the inability to participate in the telephonic prehearing conference on the November 21, 2014, especially given Father's participation in the first prehearing conference that morning where he made the peremptory challenge of ALJ Marson.

Finally, Father is well-versed in motion practice in front of OAH. Father has chosen to file multiple cases at the same time and then not participate as ordered. As such, this case is dismissed without prejudice.

ORDER

OAH Case No. 2014070965 is dismissed without prejudice.

IT IS SO ORDERED.

DATE: December 2, 2014

/s/

MARGARET BROUSSARD
Administrative Law Judge
Office of Administrative Hearings