

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

ELK GROVE UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2015010203

ORDER GRANTING REQUEST TO
WITHDRAW COMPLAINT WITHOUT
PREJUDICE AND CLOSING CASE
WITHOUT ISSUING WRITTEN
DECISION

On January 7, 2015, Elk Grove Unified School District filed a due process complaint naming Student as respondent. The matter proceeded to hearing on March 3 and 4, 2015. Documentary evidence and witness testimony were submitted by both sides. The record was left open until March 23, 2015, for the parties to submit written closing briefs.

On March 17, 2015, Elk Grove submitted a request to withdraw its due process hearing request without prejudice and requested that the case be closed and no decision issued. On March 18, 2015, the undersigned Administrative Law Judge deferred ruling on the request to withdraw this matter without prejudice and invited the parties to provide supplemental information supporting the request. On March 20, 2015, Elk Grove submitted an executed copy of a settlement agreement entered into among the parties in this matter and a declaration from Elk Grove's attorney stating the parties' mutual intent to have the matter withdrawn without prejudice, and to have the case closed without a final written decision being issued. No additional information was received from Student.

APPLICABLE LAW

Neither state and federal special education statutes or regulations nor the California Administrative Procedures Act specifically address motions to withdraw complaints after a due process hearing commences. The Code of Civil Procedure, section 581, et seq., addresses such motions in the context of state civil proceedings.¹ Although not binding in special education matters, the Code of Civil Procedure can provide guidance in this situation. Specifically, section 581, subdivision (c), states that a plaintiff may dismiss his or her

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

complaint, or any portion thereof, with or without prejudice prior to the actual trial commencing. Section 581, subdivision (e), states that after a trial commences, a court will dismiss a complaint 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.

OAH has previously denied a student's motion to withdraw an issue unilaterally after the case had been submitted (*Student v. Moreno Valley Unified School District* (2009) Cal.Offc.Admin.Hrngs Case No. 2008120285) and, in a case consolidated with a District's request, permitted a student to withdraw her case on the first day of hearing, but only with prejudice (*Rialto Unified School District v. Student* (2006) Cal.Offc.Admin.Hrngs Case No. 2005090655.) OAH has also issued orders to show cause as to why a case should not be dismissed with prejudice for failure to prosecute. (See, for example, *Student v. Castro Valley Unified School District*, (2011) Cal.Offc.Admin.Hrngs Case No. 2011020888).

DISCUSSION

As noted above, OAH would typically dismiss a case with prejudice after a hearing commences unless all parties agree to a dismissal without prejudice or unless there is good cause shown to support a dismissal without prejudice. In this case, the parties executed a settlement agreement that specifically states, "[t]he District agrees to withdraw its action in District Action [OAH 2015010203] without prejudice prior to the date closing briefs are due." That provision forms a significant part of the consideration for the agreement. The agreement was signed by both parties on March 16, 2015. Accordingly, it is determined that all parties to this action agree to a dismissal without prejudice. Although OAH is not bound by the Code of Civil Procedure, in this case there is good cause for Elk Grove's request to withdraw this case and have it closed without issuing a final written decision, and the request is granted.

ORDER

1. Elk Grove's request that OAH Case No. 2015010203, *Elk Grove Unified School District v. Parent on Behalf of Student*, be withdrawn without prejudice is granted.
2. All dates currently on calendar are vacated.
3. OAH Case No. 2015010203 is closed effective the date of this order.
4. No written decision will be issued in this matter.

IT IS SO ORDERED

DATE: March 20, 2015

/s/

JOY REDMON
Administrative Law Judge
Office of Administrative Hearings