

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN MATEO-FOSTER CITY SCHOOL
DISTRICT.

OAH Case No. 2015050320

ORDER TO SHOW CAUSE WHY
CASE SHOULD NOT BE DISMISSED,
WHY STUDENT’S COUNSEL
SHOULD NOT BE ORDERED TO PAY
EXPENSES; AND CONTINUING
PREHEARING CONFERENCE ONLY

On April 30, 2015, Student filed a request for due process hearing with the Office of Administrative Hearings naming the San Mateo-Foster City School District. This matter was originally scheduled for hearing on June 24, 2015. On June 1, 2015, OAH granted the parties’ joint request for a continuance and continued the hearing to July 14, 2015. On July 1, 2015, the parties filed a second request for continuance which OAH denied on July 2, 2015, as failing to establish good cause. OAH advised the parties that any further request for continuance “must show specific good cause, including unavoidable unavailability that was unanticipated and unknown at the time the first request for continuance was made on May 30, 2015.”

Student is represented by Susan Foley, Attorney at Law. San Mateo-Foster City School District is represented by Melanie Seymour, Attorney at Law. On July 3, 2015, Student filed a further request for continuance because Ms. Foley has a family member who is having surgery and she needs to assist in the recovery period during July 2015. In this letter Ms. Foley states that she will be available on her cell phone for the scheduled PHC on July 6, 2015. On July 6, 2015, San Mateo-Foster City filed a request for continuance because its representative and Director of Special Education is unavailable for hearing and because of other witness scheduling issues. This request is supported by a declaration under penalty of perjury.

OAH requires a party to file a PHC statement at least three business days prior to the PHC. San Mateo-Foster City filed its PHC statement late on July 6, 2015. Student has failed to file a PHC statement at all. On July 6, 2015, the ALJ attempted to reach Ms. Foley for the PHC at the scheduled time of 3: 00 p.m., at the cell phone number she provided. The call went to an automated voice message system and the ALJ left a message that the PHC would be convened at 3:15 p.m. The ALJ also called Ms. Foley’s office and was informed that the cell phone number was the only way to reach Ms. Foley. At 3:15 p.m., the ALJ left a second message indicating that the PHC would be convened at 3:30 p.m. and if Ms. Foley was not

available that an Order to Show Cause would issue. At 3:30 p.m., the ALJ left a third message for Ms. Foley informing her that the PHC would be convened in her absence.

The ALJ convened the PHC with Ms. Seymour. Because Student filed this request for hearing, the ALJ deemed it inappropriate to review the issues in the case, because the participation of Student's counsel is necessary. Therefore the PHC was continued to Friday, July 10, 2015, at 10:00 a.m. As a result of the failure of Ms. Foley to appear for the scheduled PHC, no PHC has been held and the matter remains scheduled for due process hearing on July 14, 2015.

ORDER TO SHOW CAUSE

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).) Given the short time frames applicable to this case, it is critical that the parties follow orders issued by OAH and participate in advancing the matter to hearing. The burden of proof in this case is on Student. Student will be provided an opportunity to establish if she intends to go forward with this case.

Student's counsel is ordered to show cause why the above-captioned case should not be dismissed for her failure to participate, prosecute or advance the case for hearing. Student's counsel is ordered to file a written response with OAH, by not later than 5:00 p.m. on July 8, 2015, by facsimile transmission to (916) 376-6319. Student's response shall address why counsel did not appear for the PHC on July 6, 2015, and whether she intends to go forward to a hearing. Student shall also file a PHC statement.

Under certain circumstances, an administrative law judge presiding over a special education proceeding is authorized to shift expenses from one party to another, or to OAH. (Gov. Code, §§ 11405.80, 11455.30; Cal. Code. Regs., tit. 5, § 3088; see *Wyner ex rel. Wyner v. Manhattan Beach Unified School Dist.* (9th Cir. 2000) 223 F.3d 1026, 1029 ["Clearly, [California Code of Regulations] § 3088 allows a hearing officer to control the proceedings, similar to a trial judge."].) Only the ALJ presiding at the hearing may place expenses at issue. (Cal. Code. Regs., tit. 5, § 3088, subd. (b).) Student's written response shall address why OAH should not order Student's counsel to pay OAH's expenses for preparing for and attempting to conduct the July 6, 2015 PHC, and the time preparing this OSC. A copy of the response shall be served on counsel for San Mateo-Foster City.

A telephonic status conference and PHC shall take place at 10:00 a.m., on Friday, July 10, 2015. OAH will initiate the telephone call to the parties. The parties shall be prepared to discuss the status of the case and whether Student's complaint should be dismissed. The hearing dates shall remain on calendar. If the ALJ determines that Student intends to proceed to hearing, the PHC will be conducted at that time, Should Student's

counsel fail, without excuse, to timely file a response and PHC statement as ordered above, or participate in the telephonic status conference and PHC, OAH may impose sanctions and dismiss this case without further notice.

ORDER

1. An Order to Show Cause as to Why the Matter Should Not be Dismissed and Student' Counsel Ordered to Pay Expenses is hereby issued. Student shall file a response and PHC statement not later than 5:00 p.m., on July 8, 2015.

2. The parties shall appear at a telephonic status conference and PHC at 10:00 a.m., on July 8, 2015.

3. Should Student fail, without excuse, to timely file a response and PHC statement as ordered above, or participate in the telephonic status conference and PHC, OAH may impose sanctions and dismiss this case without further notice.

4. The hearing dates of July 14 -16, 2015, are confirmed.

DATE: July 6, 2015

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings