

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

NEW HAVEN UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011010207

ORDER GRANTING REQUEST TO
REOPEN CASE

On February 28, 2011, Parent on behalf of Student (collectively, Student) filed a request that the Office of Administrative Hearings (OAH) reopen the above-titled case (Request to Reopen). The Request to Reopen is based on the grounds that Student's former counsel, at the time she filed her notice of withdrawal as counsel for Student in the case, also filed a request for dismissal of Student's due process complaint (Complaint), without authority from Student.

On March 3, 2011, New Haven Unified School District (District) filed opposition to the Request to Reopen, contending that it would be prejudiced if the case were reopened and the matter proceeded to hearing on the dates pending at the time the request for dismissal was filed. District states that as a result of the filing of the request for dismissal, OAH vacated the prehearing conference (PHC) which had been set for February 28, 2011, and the hearing dates of March 15, 16, and 17, 2011. Therefore, District was not able to participate in a PHC, and stopped all preparations for hearing, including releasing its scheduled witnesses from appearing at the hearing. District also states, however, that it did not oppose the Request to Reopen if OAH set new PHC and due process hearing dates.¹

This case was filed on January 4, 2011, and the parties' stipulation to continue the hearing dates was granted on February 22, 2011, which stopped the running of the 45-day period for issuance of a decision. Student's former counsel filed a notice of withdrawal as counsel of the case on February 25, 2011, on the grounds of "ineffectiveness of counsel." On the same day, Student's former counsel also filed a request for dismissal without prejudice of the case on the grounds that she was withdrawing from the case due to "ineffectiveness of counsel." The request for dismissal does not indicate that Student consented to the dismissal of the case. Further, Student timely filed this Request to Reopen on the first business day after Student's former counsel filed the request for dismissal, which

¹ District's opposition mentions that Student filed another request for due process hearing on March 1, 2010. OAH's case management system does not reflect that Student has filed any other request for due process hearing, and therefore this Order does not address any case other than the Complaint which is the subject of Student's Request to Reopen.

supports Student's position that the request for dismissal was filed without his consent. Indeed, Student so promptly filed his Request to Reopen that OAH did not have time to issue a formal Order dismissing the case pursuant to the request for dismissal, although OAH vacated the PHC and hearing dates in response to the request for dismissal.

Furthermore, the parties will suffer no prejudice if the case is re-opened, as the 45-day time period for issuance of a decision stopped running on February 22, 2011, when the parties' stipulation for continuance was granted.

Consequently, the Request to Reopen the case is GRANTED.

A mandatory telephonic Trial Setting Conference (TSC) will be held in this matter on March 16, 2011, at 2:30 p.m.

The parties shall be prepared to provide OAH with an accurate time estimate for the hearing and to re-schedule the prehearing conference and hearing dates during that TSC. Any request for mediation will be addressed at the TSC. All further filings in this case shall be directed to the Sacramento office of OAH.

A party seeking to continue the TSC date shall submit the request in writing and include the case name and OAH case number; the name, address, and telephone number of the requesting party and all other parties; the facts supporting the request for continuance; whether any party opposes the request for continuance; and at least three mutually preferred dates and times for rescheduling the TSC, which may not be later than two weeks after the currently scheduled TSC. Facsimile transmission may be used to file the continuance request with OAH and to serve it on all parties. The parties shall not mail to OAH a hard copy of any document that has been previously filed by facsimile transmission.

ORDER

1. The request to reopen the case is GRANTED. The case of *Parent on Behalf of Student v. New Haven Unified School District*, OAH Case No. 2011010207) is reopened and shall proceed under the same case number.
2. A telephonic trial setting conference will be held on March 16, 2011, at 2:30 p.m. OAH will initiate the call.

Dated: March 9, 2011

/s/

ELSA H. JONES
Administrative Law Judge
Office of Administrative Hearings