

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

ELK GROVE UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011080313

ORDER TO SHOW CAUSE WHY
CASE SHOULD NOT BE DISMISSED,
CONTINUING PREHEARING
CONFERENCE AND HEARING
DATES, AND ORDERING PERSONAL
APPEARANCES

On July 21, 2011, Student filed a request for due process hearing (complaint) against the Elk Grove Unified School District (District). On August 10, 2011, the Office of Administrative Hearings (OAH) issued a Scheduling Order setting the telephonic Prehearing Conference (PHC) in the matter on August 24, 2011 and the Due Process Hearing on September 1, 2011.

Between August 19, and August 24, 2011, OAH Staff made several calls to both Parents and District in order to obtain required PHC statements from both parties regarding the issues, exhibits and witnesses for the hearing among, others. Staff was unable to reach the parties, and messages were left for both parties on August 19 and August 22, 2011. Two additional messages were left for Parents on August 23, 2011. Neither Parents nor District returned OAH staff's call regarding the PHC and neither party submitted a prehearing conference statement.

On August 24, 2011, the undersigned attempted to convene the PHC by telephone, and in the process made two calls to Parents. Parents were unreachable and messages were left. District's representative, Kevin Schaefer, indicated that District's Director of special education, Mr. Bill Tollestrup, was out of the office, and that Mr. Schaefer was not prepared to participate in the PHC as he was unfamiliar with the case, and was unaware of the PHC.

Therefore, because OAH has been unsuccessful in reaching Student's Parents, and because both parties have failed to file prehearing conference statements, participate in the prehearing conferences, or to request a continuance of the hearing and prehearing conference, it does not appear that Student intends to proceed with the prosecution of this matter, or to a hearing. While Parents have been unavailable to OAH, have not responded to several inquiries made by OAH's staff, and have not participated in the scheduled PHC, they should be given the opportunity to establish if they intend to go forward with this case.

Accordingly, an Order to Show Cause (OSC) is hereby issued as to why this matter should not be dismissed.

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 both parties follow orders issued by OAH and participate in advancing the matter to hearing. However, the burden of proof in this case is on Student. Student's failure to participate in the PHC may indicate his intent to abandon his case. Absent receipt of notification from Student withdrawing his request for a hearing, or asking to dismiss his case, the District faces investing time and expenses preparing for a hearing, and OAH is obligated to hold a hearing. In the alternative, if the parties have settled the case, the burden remains on Student to withdraw or seek dismissal of his case.

Student is ordered to show cause why the above captioned case should not be dismissed for his failure to participate, prosecute or advance the case for hearing against District. **Parents, or a representative for Student, are ordered to file a written response with OAH by not later than 5:00 p.m. on September 5, 2011,** by facsimile transmission to (916) 376-6319. Student shall serve a copy of the response on District or counsel for District by mail or facsimile. Student's response shall address the questions of why he did not participate in the PHC and whether he intends to go forward to a hearing. If Student intends to proceed to hearing, Student shall file a PHC statement no later than 5:00 p.m. on Friday, September 2, 2011, and serve a copy on the District. If Student files a PHC statement, then District shall file a PHC statement by 12:00 p.m. on September 6, 2011.

The PHC is reset, and shall take place on September 12, 2011, at 1:30 p.m. This is not a telephonic prehearing conference. Therefore, parties shall appear in person at the OAH offices, located at 2349 Gateway Oaks Drive, Suite 200, Sacramento, CA 95833. The parties shall be prepared to discuss the status of the case, the issues, witnesses, and documentary exhibits for hearing, and whether Student's complaint should be dismissed.

Due process hearing date is continued, and the hearing date of September 1, 2011 is vacated. **The hearing dates of September 27 and 28, 2011 are hereby set, unless matter is dismissed pursuant to the OSC included herein.**

Should Student, Parent or a representative fail, without excuse, to timely file a response as ordered above, or participate in the PHC set above, OAH may dismiss this case without further notice. If Student files a response which establishes that Student intends to proceed to hearing, the administrative law judge at the PHC will determine how the matter shall proceed forward. If Student fails to respond or establish that Student he

intends to proceed to hearing, OAH will dismiss Student's complaint. If Student has abandoned the case and no longer wishes to pursue it, he shall file a notice of withdrawal with OAH.

ORDER

1. An Order to Show Cause as to Why the Matter should not be dismissed is hereby issued. Parent must file a written response no later than 5:00 p.m. on September 5, 2011, or the matter may be dismissed. In addition, if Student intends to go forward, he must file a PHC statement by that deadline.
2. If Student files a PHC statement, then District shall file a PHC statement by 12:00 p.m. on September 9, 2011.
3. The hearing date of September 1, 2011 is vacated. New hearing dates are set for September 27 and 28, 2011, unless the matter is withdrawn or dismissed.
4. The prehearing conference is reset for September 12, 2011, at 1:30 p.m.

IT IS SO ORDERED.

Dated: August 26, 2011

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings