

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SADDLEBACK VALLEY UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2011101038

ORDER DISMISSING STUDENT'S
COMPLAINT WITHOUT PREJUDICE

On October 31, 2011, Student and Mother filed a request for due process hearing (Complaint). OAH initially scheduled the hearing to take place on December 27, 2011. After two joint motions for continuance were granted, the hearing was scheduled to take place on March 5 through March 7, 2012. On February 27, 2012, Administrative Law Judge (ALJ) Elsa H. Jones, Office of Administrative Hearings, convened the duly noticed telephonic prehearing conference (PHC). Epiphany Owen, Attorney at Law, of Rutan & Tucker, appeared on behalf of the Saddleback Valley Unified School District (District). There was no appearance by or on behalf of Student and Mother (collectively, Student), who were in pro se. Student had not filed a PHC statement or responded to OAH's telephone call prior to the PHC whereby OAH inquired into the status of the matter. As a result of Student's failure to appear, the ALJ issued an Order to Show Cause re: Dismissal (OSC), ordering Student to telephonically appear on March 5, 2012, at 1:30 p.m., to explain why the matter should not be dismissed for Student's failure to diligently prosecute the matter.

The parties were timely notified of the OSC. On February 27, and February 28, 2012, OAH served the ALJ's written OSC requiring Student to appear by telephone on March 5, 2012, at 1:30 p.m. The OSC notified Student, *inter alia*, that the matter would be dismissed for lack of prosecution unless Student appeared to explain why the matter should not be dismissed.

On March 5, 2012, at 1:30 p.m., the ALJ convened a telephonic hearing on the OSC. Epiphany Owen, Attorney at Law, appeared on behalf of the District. Student did not appear.

APPLICABLE LAW AND DISCUSSION

Student has failed to diligently prosecute or advance the Complaint, or to participate in this action. The IDEA requires speedy resolution of complaints. Subject to the 30-day resolution period after the complaint is filed, the filing of an amended complaint, and

continuances based upon good cause, a final decision with respect to the complaint must be served upon the parties within forty-five days. (34 C.F.R. § 300.515 (a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal.Code Regs., tit. 1, § 1020.)

This matter has been continued twice since Student filed the Complaint. On February 27, 2012, Student failed to appear at the PHC. Student failed to file a PHC statement or to respond to OAH's inquiry prior to the PHC regarding the status of the matter.

Student failed to diligently prepare this case for trial. Each party to this proceeding was required to disclose the party's issues, witnesses, and hearing exhibits to the other parties within the requisite timelines. (Ed. Code, § 56504, subd. (e)(6), (e)(7).) In addition to failing to appear at the PHC, and failing to file a PHC statement, Student failed to comply with this statute.

Student's failure to timely prosecute this action is contrary to the intent of the IDEA and the Education Code. Further, the intent of the IDEA and the Education Code that a due process hearing be held expeditiously is consistent with the general policy of this state that plaintiffs prosecute actions with reasonable diligence. (Code Civ. Proc., § 583.130.) Civil actions may be dismissed for delay in prosecution. (Code Civ. Proc., § 583.410, subd. (a)).

Dismissal without prejudice is warranted where, as here, Student has failed to diligently proceed with the Complaint. When Student is ready to proceed with his claim, Student may file another complaint on the same claim, as long as such complaint is filed within two years of the District's action which is the subject of the new complaint.

Based upon the foregoing, this matter is dismissed without prejudice, for failure of Student to prosecute the Complaint with reasonable diligence.

IT IS SO ORDERED.

Dated: June 18, 2012

/s/

ELSA H. JONES
Administrative Law Judge
Office of Administrative Hearings