

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SACRAMENTO CITY UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015010428

ORDER DISMISSING CASE IN ITS
ENTIRETY WITHOUT PREJUDICE

Student filed this action on January 5, 2015, naming Sacramento City Unified School District as respondent. Over the course of the ten months this matter has been pending, Student requested and received numerous continuances for various reasons. On October 26, 2015, the day before the due process hearing was scheduled to commence, Student sought another continuance. That motion to continue was denied on October 26, 2015. To ensure that Student was aware the motion was denied, a Spanish speaking clerk from the Office of Administrative Hearings contacted Parents via telephone and informed Father that the matter was proceeding the following day as scheduled and that he was to appear.

On October 27, 2015, the undersigned Administrative Law Judge, Sacramento City's counsel and its district representative, and the translator obtained by OAH to provide translation services to Father were present and prepared to proceed at 9:30 a.m. at the location set for the due process hearing. OAH also secured a second translator available via telephone to provide Spanish language translation services to Mother at her home as an accommodation. Parents did not appear at the due process hearing.

The case was called and the undersigned ALJ went off the record to have a clerk from OAH attempt to contact Parents regarding their attendance at the hearing. An OAH clerk who is fluent in Spanish reached Father via telephone. Father informed the clerk that he disagreed with the continuance being denied and did not intend to appear at a due process hearing until sometime after his wife has delivered the baby she is expecting.

The ALJ went back on the record and informed the individuals present that Parents did not intend to appear at the due process hearing. Sacramento City then made a motion to dismiss the matter with prejudice for Parents failure to prosecute the matter. In support of the motion to dismiss the matter with prejudice, Sacramento City cited Code of Civil Procedure section 581 et. seq. and asserted that the district has expended significant time and resources preparing for hearing and was prepared to proceed.

The case was dismissed on the record for Parents' failure to appear, but the undersigned ALJ took under submission whether it was dismissed with or without prejudice.

APPLICABLE LAW

The California Administrative Procedures Act and State and federal special education statutes and regulations do not specifically address whether or not a motion to dismiss should be granted with or without prejudice for the failure to appear at a due process hearing. 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 (b)(5), states that a matter may be dismissed by, "the court, without prejudice, when either party fails to appear on the trial and the other party appears and asks for dismissal." Section 581, subdivision (d), provides for the dismissal to be with prejudice but only, "when upon the trial and before the final submission of the case, the plaintiff abandons it." Section 581, subdivision (a)(6) defines the commencement of trial as, "at the beginning of the opening statement or argument of any party or his or her counsel, or if there is no opening statement, then at the time of the administering of the oath or affirmation to the first witness, or the introduction of any evidence."

DISCUSSION

In this case, the facts do not meet the legal criteria as outlined above for dismissing the matter with prejudice. Specifically, the hearing had not commenced because opening statements had not been taken, no witness was put under oath, and no evidence was introduced. Moreover, despite Father's failure to appear for the hearing, he had not "abandoned his claim." His failure to appear, while inappropriate, was not consistent with abandonment. According to Father, he refused to attend the hearing at the scheduled time because he believed a continuance should have been granted, not because he did not want to proceed with the case. Additionally, Father's actions prior to the hearing were not consistent with abandonment. For example, he participated in the October 19, 2015 prehearing conference and, according to Sacramento City's counsel, timely provided evidence to Sacramento City (albeit not in conformity with the PHC order specifying that it be appropriately marked and tabbed). Accordingly, the matter is dismissed without prejudice.

The undersigned ALJ is aware that Sacramento City has expended significant time and resources preparing for hearing. It is not left without any benefit from this Order or deprived of other remedies that may be available under the law. First, this matter is dismissed on October 27, 2015, on the record. In the event that Student seeks to file another case on the same issues, such a request will not reopen this case that was filed more than ten months ago with its applicable statute of limitations period, as it is closed. Second, nothing

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

in this Order precludes Sacramento City from seeking to enforce any claims it may have which flow from the conduct of Parent in this matter in a court of competent jurisdiction. .

ORDER

1. OAH Case No. 2015010428 is dismissed without prejudice.
2. The case is deemed to have been dismissed on October 27, 2015.

IT IS SO ORDERED.

DATE: October 28, 2015

/s/

JOY REDMON
Administrative Law Judge
Office of Administrative Hearings