

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015070667

ORDER DISMISSING STUDENT'S
COMPLAINT

On October 23, 2015, a scheduled telephonic hearing on an Order to Show Cause as to why this matter should not be dismissed for failure to prosecute was held before Administrative Law Judge Clifford H. Woosley, Office of Administrative Hearings. Donald Erwin, Attorney at Law, appeared on behalf of Los Angeles Unified School District. The hearing on the OSC was recorded.

Parent failed to appear on behalf of Student. The ALJ called Parent at 10:00 a.m. to convene the telephonic hearing. A person answered the cell phone number, but the connection was weak and the person could not be understood. After about 5 seconds, the connection was lost. ALJ Woosley immediately called back; no one answered; the call went to voicemail. ALJ Woosley left a message, identifying himself, who the call was for, the purpose of the call, and that he would call back at 10:15 am to convene the hearing. ALJ Woosley telephoned and informed Mr. Irvin that the hearing was continued to 10:15 a.m.

At 10:15 a.m., ALJ Woosley telephoned Parent (at both phone numbers available to OAH); no one answered and the calls were transferred to voicemail. ALJ Woosley left messages, identifying himself, whom the call was for, the purpose of the call, and that the hearing on the Order to Show Cause would be continued to 11:00 a.m., October 23, 2015. In the voicemail left at both of Parent's phone numbers, ALJ Woosley informed Parent that if she did not make herself available at that time, the telephonic OSC hearing would proceed with the District's representative and the complaint would likely be dismissed. ALJ Woosley told Mr. Erwin that the telephonic OSC hearing was continued to 11:00 a.m.

At 11:00 a.m., October 23, 2015, ALJ Woosley called Parent at both available phone numbers; no one answered. At both of Parent's phone numbers, ALJ Woosley left voicemail messages, indicating that the telephonic hearing on the order to show cause would proceed with District's representative and that the due process request would likely be dismissed. ALJ Woosley telephoned Mr. Erwin, who participated in the hearing on the OSC.

APPLICABLE LAW

The IDEA requires speedy resolution of complaints. Under the IDEA, parties must request a hearing within two years of the date they knew or should have known of the alleged wrongful action. (Code Regs § 300.511(e).) The parties must be given an opportunity for an impartial due process hearing, Code Reg§ 300.511(a). Subject to the 30 day stay after the complaint, or amended complaint if filed, and continuances based upon good cause, a final decision must be reached and mailed to the parties within forty-five days. (Code Regs §300.515).

Although it is always preferable to resolve actions on their merits (Cal. Civ. Proc. Code § 583.130.), dismissal without prejudice is warranted where, among other things, a party fails to proceed with due diligence.

DISCUSSION

On June 23, 2015, Parent filed the complaint on behalf of Student, naming District. Since the filing, Parent has failed to diligently participate in, prosecute, and advance the complaint. Parent has failed to follow OAH orders and did not appear at mediations and telephonic conferences. At the time of filing, Student was 18 years old. OAH requested that Parent file and serve documentation of Student's transfer of educational rights to Parent. Parent did not provide such documentation.

On August 5, 2015, OAH granted the parties' request to continue, setting the mediation for August 26, 2015, the prehearing conference for September 14, 2015, and the hearing for September 21, 2015. An administrative law judge and a District representative appeared for the August 26, 2015 mediation; Parent did not appear.

Pursuant to the initial scheduling order, Parent was instructed to file a prehearing conference statement at least three business days before the PHC. Parent did not do so before ALJ Alexa Hohensee convened the September 14, 2015 PHC. Mother appeared on the telephonic PHC and indicated she wanted to mediate the matter. Accordingly, the parties agreed to a new mediation date of September 24, 2015. ALJ Hohensee continued the PHC to October 5, 2015, and the hearing to October 13, 2015. ALJ Hohensee issued a written order following the PHC, which set the continued mediation, PHC, and hearing dates. OAH served the order upon the parties.

An administrative law judge and a District representative appeared for the mediation, on September 24, 2015, a time to which Parent agreed. Parent did not appear at the mediation. Parent did not respond to voicemails left at the phone number provided by Parent to District and OAH.

Parent did not file a PHC statement before ALJ Hohensee convened the October 5, 2015 PHC. Although Parent telephonically appeared, Parent's phone connection was weak

and eventually lost. Attempts to reconnect with Parent failed. Before the disconnection, Parent said she held Student's education rights. She promised to provide District with a statement of issues, a list of witnesses, and exhibits. District requested a short continuation to obtain Student's clarification of issues and, if appropriate, amend its PHC statement. ALJ Hohensee continued the PHC to October 19, 2015, and the hearing to November 3, 4, and 5, 2015; the Order Following PHC was issued and served on October 7, 2015. Also, on October 8, 2015, OAH issued and served ALJ Hohensee's Order directing Parent to file Student's transfer of educational rights to Parent with OAH, no later than October 15, 2015.

Parent did not file documentation of Student's transfer of educational rights nor a PHC statement before ALJ Hohensee convened the October 19, 2015 PHC at 10:00 a.m. At that time, Parent answered her phone but the phone connection was very poor; Parent said she was at a doctor's appointment and not available for the PHC. Parent asked that the PHC be continued to the afternoon. ALJ Hohensee granted the request and continued the PHC to 1:00 p.m., at which time Parent stated she would be available. Mr. Erwin was notified of the continuance.

However, Parent did not appear for the PHC at 1:00 p.m, October 19, 2015. When Parent did not answer, ALJ Hohensee left message that she would call again in a few minutes. When ALJ Hohensee called a few minutes later, Parent did not answer. ALJ Hohensee proceeded to hold the PHC with Mr. Erwin appearing on District's behalf. ALJ Hohensee continued the PHC to 10:00 a.m., October 23, 2015, leaving the hearing dates as scheduled.

At the same time, ALJ Hohensee issued an Order to Show Cause, directing Parent to appear at 10:00 a.m., October 23, 2015, and show cause as to why Student's case should not be dismissed for failure to proceed with due diligence. The OSC Order cautioned Parent that if Parent did not appear at the OSC hearing, the matter would be dismissed. OAH duly served the Order Following PHC and the Order to Show Cause by mail and personal delivery to the address provided by Parent, as well upon District via facsimile.

At the October 23, 2015 hearing on the OSC, Mr. Erwin confirmed that neither District nor its counsel ever received a statement of issues and evidence from Parent. District also never received documentation indicating that the adult Student had transferred his educational rights to Parent. Mr. Erwin affirmed the two phone numbers which OAH utilized as the only phone numbers possessed by District; Parent provided both numbers.

Parent has failed to diligently prosecute the complaint, as demonstrated by the failure to appear at mediations and telephonic prehearing conferences, as well as the hearing on the Order to Show Cause. Parent has also disregarded OAH orders to provide PHC statements (delineating the issues, witnesses, and documentary evidence for hearing) and, most significantly, documentary confirmation that Student transferred his educational rights.

