

Before the
Administrative Hearing Commission
State of Missouri



, BY AND THROUGH)	
HIS PARENT, ,)	
)	
Petitioner,)	
)	
vs.)	No. 13-1562 ED
)	
LEBANON R-III SCHOOL DISTRICT,)	
)	
Respondent.)	

ORDER

We dismiss this case as a sanction, because Petitioner has failed to comply with our order to file a Statement and Disclosure.

Under 1 CSR 15-3.436(1)(C) and 1 CSR 15-3.425(1)(A), this Commission may impose sanctions, including the sanction of dismissal, for a party's failure to comply with our orders.

Mr. filed his due process complaint herein on September 3, 2013. The same day, we set a prehearing conference for September 17, 2013 and ordered the parties to file prehearing conference statements no later than three business days prior to the conference. We later continued the prehearing conference to September 25, 2013. Respondent Lebanon R-III School District filed a prehearing conference statement on September 12, 2013. Mr. never filed one.

In our Order of September 18, 2013, we concluded that the due process complaint was insufficient, and so allowed Mr. until September 24, 2013 to amend it. He did so.

Following up on the prehearing conference, and by our Order of September 26, 2013, we ordered Mr. to file a supplement to the amended complaint no later than September 27, 2013. He did so.

In view of the significant amendments to the complaint, our Order of September 26, 2013 also directed the parties each to file a Statement and Disclosure, containing the following information:

- A. A concise statement of the issues that remain to be decided at the due process hearing and the proposed resolution of such issues, based upon those issues raised in the amended and supplemented due process hearing request;
- B. The name of each witness the party may call at the due process hearing, a brief summary of the subject of the expected testimony of the witness, and a description of the issue to which the testimony of the witness relates;
- C. The name and address of each expert witness the party intends to call at the due process hearing, a brief summary of the opinion that the expert is expected to give, and a description of the issue to which the testimony of the expert relates;
- D. A list of documentary evidence that the party intends to present, and a description of any physical or demonstrative evidence; and
- E. Whether an interpreter or special accommodation is needed at the due process hearing by a party or the party's witnesses.

The parties have now been aware for about seven weeks that we required the specified information to be filed, in some form, because the information we ordered the parties to provide in their Statements and Disclosures is substantially the same as what we ordered on September 3 to be provided by the parties in their respective prehearing conference statements. The parties were given three weeks to file their Statements and Disclosures, or until October 18, 2013.

On October 16, 2013, filed a motion for extension of time, requesting that any filing deadlines he had missed be extended to October 25, 2013, because a personal situation had arisen the week prior. We denied the motion by our Order of October 18, 2013, explaining,

While we are sympathetic to personal situations that arise, the instant case is on a fast track for disposition, by operation of law. The hearing, continued once already, is less than three weeks away. Any documents filed on October 25 would be filed less than two weeks before the hearing.^[1] As a practical matter, there is insufficient time remaining before hearing to grant such an extension.

On our own motion, we then ordered “that the parties’ respective Statements and Disclosure, presently due no later than October 18, 2013 may be filed no later than 5 p.m. on Tuesday, October 22, 2013.”

School District filed its Statement and Disclosure on October 22, 2013, before 5 p.m. Mr. did not file one. Instead, on October 22 he filed another motion for extension of deadlines to October 25, again citing the family situation that arose on Wednesday, “October 9th 2013, and the entire week[.]” As addressed above, we previously and explicitly rejected such basis for extension. We had also granted the parties four additional days to file their Statements and Disclosures.

Mr. has been aware for almost seven weeks, since he filed the due process complaint, that we required the information specified to be filed in some form, and has failed to comply with our order to file it on October 22, 2013. The sanction of dismissal is therefore appropriate.

We note that no prejudice attaches to this dismissal and that a complaint may be filed anew. We further note that the parties may seek mediation of the dispute, at no charge to the parties, and prior to the filing of a due process complaint, pursuant to 34 CFR 300.506.

Summary

¹ The hearing is presently scheduled to begin on November 6, 2013.

We dismiss the instant case and cancel the hearing.

SO ORDERED on October 24, 2013.

ALANA M. BARRAGÁN-SCOTT
Commissioner