

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FULLERTON JOINT UNION HIGH
SCHOOL DISTRICT.

OAH CASE NO. 2012080109

ORDER DENYING STUDENT'S
REQUEST TO COMPEL
PRODUCTION OF DOCUMENTS AND
REQUEST TO COMPEL
TRANSLATED DOCUMENTS

On August 6, 2012, Parent on behalf of Student (Student) filed a request for due process hearing. Said complaint was filed in the Spanish language, and was translated into the English language by OAH on September 4, 2012. On September 13, 2012, Nydia Celina Viloria, Esq., filed a Notice of Representation of Student.¹ On September 14, 2012, Student's attorney filed a Motion to Compel Production of Student's Records and a Motion to Compel the Translation into the Spanish language of any and all documents filed with OAH as part of this matter.

On September 18, 2012, the attorney for Fullerton Joint High School District (District) filed oppositions to both motions. On September 19, 2012, Student filed a Reply to the Oppositions.

On September 19, 2012, Administrative Law Judge (ALJ) Judith L. Pasewark, held a telephonic conference with Student's attorney, and Karen Gilyard, Esq., the District's attorney, regarding the unintelligible portions of Student's complaint, as well as to discuss the status of the District's production of Student's educational records. The discussion was informal and was not recorded.

Motion to Compel Production of Student's Educational File

APPLICABLE LAW

Parents of a child with a disability are guaranteed the right to access their child's educational records pursuant to the Individuals with Disabilities Act (IDEA), the Family Educational Rights and Privacy Act (FERPA), Section 504 of the Rehabilitation Act of 1973 (Section 504), and California Education Code, section 56504.

¹ Student's attorney subsequently filed a Notice of Withdrawal as Attorney on September, 21, 2012.

Under the IDEA, parents with a child with a disability are entitled to examine all educational records relating to their child. (20 U.S.C. § 1232(g)(1)(A); Ed. Code, § 56404.) The IDEA, under its Procedural Safeguard Notice Requirement, provides that parents of a child with a disability must be provided with full explanation of their right to access their child's educational records. (34 C.F.R. 300.504(a) (2006).) Educational records are defined as those records which are personally identifiable to the student and maintained by an educational agency. (20 U.S.C § 1232(a)(4)(A); Ed. Code, § 56504.)

Neither the IDEA nor California law provides for prehearing discovery in a due process hearing. Rather, a party to a due process hearing has the right to present evidence and compel the attendance of witnesses at the hearing. (20 U.S.C. § 1415(h)(2); Ed. Code, § 56506, subd. (d)(2) and (3).) Further, at least five business days prior to the hearing, the parties have the right to be provided with a copy of all documents and a list of all witnesses and their general area of testimony the parties intend to present at hearing. (Ed. Code, § 56505, subd. (e).)²

DISCUSSION

As indicated by both parties, on September 18, 2012, Student's attorney received what the District indicates is Student's educational file. Student's attorney confirms she received these documents, but contends she is entitled to additional documents, specifically: (1) notes/reports of classroom observations of Student by any school district personnel or pursuant to contract(s) with independent contractors, outside agents or agencies, non-public agencies or non-public schools; (2) recordings of any individual educational program (IEP) meetings; (3) notes of psychologists, speech and language therapists, resource specialists, occupational therapists or other professionals who have provided services to, evaluated, or otherwise been involved in or responsible for the provision of a free appropriate public education (FAPE) for Student; (4) general education teacher notes; (5) e-mail communications related to Student; (6) access log; (7) requests for records; (8) copies of any documents dated after June 11, 2012, including copies of any due process documents and records requests made by parent after that date; and (9) copies of any and all documents related to the current school year.

The documents requested by Student far exceed the documents defined as Student's educational records or that are traditionally presented to parents upon request by school districts. Many of the documents requested are the work product of District staff. Further, even assuming some form of pre-hearing discovery were appropriate, Student's complaint and issues remain incomprehensible and no logical nexus can be made to the overbroad requests presented by Student. The District has provided Student's attorney with Student's educational records, therefore the issue of production of the educational file is moot. Further, Student's request for additional documents beyond the scope of Student's educational file is denied.

² Additionally, there is no requirement that this information be provided to the parties in their native language.

Motion to Compel the District to Provide Student with Translated Copies of Documents

APPLICABLE LAW

The IDEA itself does not require a school district to translate any pleadings or filings related to special education due process hearings into a parent's native language. The only clear requirement for a school district to provide non-English language translations of special education related documents relates to the provision of a written Notice of Procedural Safeguards. The procedural safeguard notice must be written in a language understandable to the general public and in the native language of the parent, unless it is clearly not feasible to do so. (34 C.F.R. 300.504 (c) (2006).) The IDEA appears to limit a school district's requirement to translate documents, and only presents an obligation to insure in some manner that parents understand the process. As indicated in *Letter to Boswell*, 49 IDELR 196 (OSEP 2007), a school district is not required to translate IEP documents, but must simply insure that when a parent speaks a language other than English, that the parent fully understands the IEP process. (34 C.F.R. 300.322 (2006).)

California law, does not require that "any and all documents" pertaining to a parent's participation in the IEP process or due process hearing be translated into a parent's native language. Instead, California selectively requires only certain documents to be translated at the request of the parent: (1) the IEP document (Cal.Code Regs., tit. 5, § 3040, subd. (b)); (2) assessment plans (Ed. Code, § 56321, subd. (b)); and (3) letters of prior written notice (Ed. Code, § 56500.4 in accordance with 34 C.F.R. 300.503(c)(2006).)

DISCUSSION

Student has requested that the District be compelled to provide Student with Spanish translations of any and all documents filed with OAH on this matter to date, including the District's response to the complaint.³ Student contends that Parent speaks Spanish and does not understand the English language, and therefore requires a translator or translated documents in order to understand any information conveyed to her in English. Student has provided no legal authority to support her contention when a parent files a due process complaint, the District is required to provide a translation of all documents presented by the by the District in preparation for the due process hearing or in the due process hearing itself. Further, documents issued by OAH as part of the due process procedure are provided to non-English speaking parents in their native language. OAH also provides non-English speaking parents with an interpreter for the prehearing conference and due process hearing to translate their native language to English and visa versa, at no cost to the parent. Student's request for

³ While not specified in this motion, yet based upon the concerns expressed by Student's attorney, this ALJ assumes that when requesting "any and all documents filed by the District," Student's argument extends to those documents yet to be filed by the District, including prehearing conference statements, evidence and witness lists, and documents presented at hearing.

the District to provide a Spanish language translation of all documents it presents in this due process filing is denied.

ORDER

1. Student's Motion to Compel the District to Provide Student's Education File is denied as moot. Student's request for additional documents is denied.

2. Student's Motion to Compel the District to Provide Spanish Language Translations of all District Documents is denied.

3. Parent is strongly advised to seek assistance from OAH regarding the content of her due process complaint and her obligation to comply with the requirement to prepare a Prehearing Statement. Parent may contact OAH for assistance by telephoning (916) 263-0880.

Dated: September 24, 2012

/s/

JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings