

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

DRY CREEK JOINT ELEMENTARY
SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2010080365

ORDER GRANTING IN PART
REQUEST FOR EXTENSION OF TIME
TO RESPOND TO STAY PUT
MOTION AND DENYING REQUEST
TO STRIKE DESIGNATION OF
FATHER AS "COUNSEL"

On August 9, 2010, the Dry Creek Joint Elementary School District (District) filed a request for due process hearing (complaint) against Student, and a motion for stay put, and served the complaint and motion on Student's parents. OAH designated the matter Case No. 2010080365, and it was assigned to this Administrative Law Judge (ALJ).

On August 11, 2010, Michael Rosenberg of the Developmental Disabilities Area Board III filed a letter representing that he is the advocate for Student in this matter. Mr. Rosenberg requests an extension of time to respond to the District's stay put motion on the ground that he had not yet been served with the complaint and motion. He also objects to the District's designation in its complaint of Student's father as Student's "counsel." On August 12, 2010, the District filed an opposition to the request for continuance.

APPLICABLE LAW

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted. (34 C.F.R. § 300.515(a)(2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Speedy resolution of the due process hearing is mandated by law and continuance of the hearing may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f)(3).) In ruling upon a motion for continuance, OAH is guided by the provisions found within the Administrative Procedure Act and the California Rules of Court that concern motions to continue. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, 3.1332 .) Generally, continuances of matters are disfavored. (Cal. Rules of Court, 3.1332(c).)

DISCUSSION

Continuance to Respond to Stay Put Motion

Mr. Rosenberg argues that a continuance should be granted because he will be required within 10 days to file an answer to the District's complaint, and it would be "inappropriate" to require him to respond to a motion before that answer is filed. Since no statute, regulation, or decision requires that a student file an answer in a case brought by a district, the argument is groundless.

However, Mr. Rosenberg also asserts that he has not yet been served with the complaint and the stay put motion, so his time to respond to the motion should not be calculated based on service of the motion on Parents only. On August 12, 2010, OAH sent a courtesy copy of the complaint and the motion to Mr. Rosenberg, and the District in its August 12 opposition states that on August 12 it served Mr. Rosenberg with the complaint and motion. Mr. Rosenberg's time to respond to that motion will therefore be calculated starting on August 12, 2010. The motion to continue will be granted to the extent it allows Mr. Rosenberg three business days from August 12, 2010, to respond to the motion, and is otherwise denied.

Objection to Designation of Father as "Counsel" for Student

Two previous disputes between these parties were decided by the undersigned ALJ on February 18, 2010. (*Student v. Dry Creek Joint Elem. School Dist.*, Offc.Admin.Hrngs. Case No. 2009060940 (*Student I*); *Dry Creek Joint Elem. School Dist. v. Student*, Offc.Admin.Hrngs. Case No. 2009071109 (*District I*). The question of Student's representation in that matter was the subject of much uncertainty and dispute. Mr. Rosenberg appeared at the hearing as Student's advocate but was not active in representing Student. Father, an attorney at law, in fact acted as Student's attorney, although he denied that he did so. The ALJ disagreed. (*Student I*, Finding of Fact 152; Conclusion of Law 44.) The issue has been controversial since.¹

Mr. Rosenberg's letter raises the prospect that this confusion of roles in *Student I* and *District I*, unless addressed, will be perpetuated in this new matter. Although he clearly identifies himself as "the advocate" for Student, he addresses the role of Parents in the proceeding in the following manner:

The District's counsel erroneously identified Student's father as legal counsel in this matter. Student's parents, to the extent that the student is represented by Area Board III, are likewise represented by me.

¹ Official notice is taken of the decisions and the pleadings and papers on file in *Student I* and *District I*, both *supra*.

This statement does not resolve whether Father (or Mother) will also seek to take a role in advocating for Student or themselves, or what that role might be. The phrase “to the extent that the student is represented by Area Board III,” is ambiguous and subject to multiple interpretations. Mr. Rosenberg’s representation that he is “the advocate” for Student does not preclude Father’s acting as the attorney for Student, whether he accepts that designation or not.

It is therefore premature to strike the District’s designation of Father as Student’s “counsel” from the pleading, and to the extent that Mr. Rosenberg so requests, the request is denied without prejudice.

ORDER

1. The request for continuance is granted to the extent that Mr. Rosenberg shall have three business days from August 12, 2010, to respond to the District’s stay put motion, and otherwise is denied.

2. The request that Father’s designation as Student’s “counsel” be stricken or disallowed is denied without prejudice to its renewal upon the filing of a clear and unambiguous written statement, authorized and agreed to by Parents and Mr. Rosenberg, setting forth who will advocate for Student in this proceeding and in what role, and who will not advocate for Student.

3. Until such a statement is filed, OAH will recognize Mr. Rosenberg as Student’s and Parents’ only advocate and representative in this matter. All pleadings and papers shall come from Mr. Rosenberg only, and OAH will disregard any advocacy on behalf of Student or Parents by anyone else.

3. The District shall henceforth serve all its pleadings and papers on both Mr. Rosenberg and Parents until ordered otherwise.

Dated: August 13, 2010

/s/

CHARLES MARSON
Administrative Law Judge
Office of Administrative Hearings