

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

v.

CULVER CITY UNIFIED SCHOOL
DISTRICT,

OAH CASE NO. 2011090039

CULVER CITY UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2011060075

ORDER DENYING MOTION FOR
RECONSIDERATION, MOTION TO
COMPEL, AND REQUEST FOR
CONTINUANCE; ORDER TO SHOW
CAUSE

On June 1, 2011, the Culver City Unified School District (District) filed a Request for Due Process Hearing against Student, in Office of Administrative Hearings (OAH) case number 2011060075 (First Case). On September 1, 2011, Student filed a Request for Due Process Hearing against the District, in OAH case number 2011090039 (Second Case). On September 8, 2011, Student filed a Motion to Consolidate the First Case with the Second Case, and on September 12, 2011, filed a motion to continue the due process hearing dates set for the First and Second Cases.

On September 13, 2011, Parent, on behalf of Student, filed a request to compel the District to produce requested records and to continue the prehearing conference and hearing dates in this matter. On September 16, 2011, the District informed OAH that Student had not served a copy of her motion on either the District or its legal counsel.

On September 19, 2011, the undersigned Administrative Law Judge consolidated the First and Second Cases for hearing, and denied without prejudice Student's motion to continue pending a ruling on Student's motion to compel.¹ On September 21, 2011, the

¹ On September 19, 2011, OAH, in its order granting Student's motion for consolidation, informed Student to serve a copy of all future correspondence, documents and motions upon the District's legal counsel.

District filed its opposition to Student's motions to compel and for a continuance. On September 28, 2011, Student filed a motion for reconsideration as to the September 19, 2011 order that denied without prejudice Student's continuance request.

APPLICABLE LAW

OAH will generally reconsider a ruling upon a showing of new or different facts, circumstances, or law justifying reconsideration, when the party seeks reconsideration within a reasonable period of time. (See, e.g., Gov. Code, § 11521; Code Civ. Proc., § 1008.) The party seeking reconsideration may also be required to provide an explanation for its failure to previously provide the different facts, circumstances or law. (See *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1199-1200.)

Before a hearing, parent or guardians "have the right and opportunity to examine all school records of the child and to receive complete copies within five business days after an oral or written request is made by the parent or guardian." (Ed. Code, § 56043, subd. (n) and § 56504.) A party to a due process hearing under the Individuals with Disabilities Education Act (IDEA) has the right to present evidence and compel the attendance of witnesses at the hearing. (20 U.S.C. § 1415(h)(2); Ed. Code, § 56505, subd. (e).)

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); 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, rule 3.1332.) Generally, continuances of matters are disfavored. (Cal. Rules of Court, rule 3.1332(c).)

Although there is no special education law or regulation that addresses bifurcation of issues, OAH generally looks to civil cases and the California Administrative Procedure Act (APA) for guidance. Government Code section 11507.3 of the APA of states, in part:

(b) The administrative law judge on the judge's own motion or on motion of a party, in furtherance of convenience or to avoid prejudice or when separate hearings will be conducive to expedition and economy, may order a separate hearing of any issue, including an issue raised in the notice of defense, or of any number of issues.

Code of Civil Procedure section 598 contains a similar provision for civil trials:

The court may, when the convenience of witnesses, the ends of justice, or the economy and efficiency of handling the litigation would be promoted

thereby, on motion of a party, after notice and hearing, make an order, no later than the close of pretrial conference in cases in which such pretrial conference is to be held, or, in other cases, no later than 30 days before the trial date, that the trial of any issue or any part thereof shall precede the trial of any other issue....

DISCUSSION

Reconsideration

Student alleges no new facts, circumstances, or law in support of the request for reconsideration as to September 19, 2011 order that denied without prejudice the September 12, 2011 continuance request related to the District's purported failure to produce documents in response to Parent's January 21, 2011 request. The September 19, 2011 order stated that the continuance request would be reviewed as part of Student's September 13, 2011 motion to compel and motion to continue, which is discussed below. Therefore, Student's motion for reconsideration based on the District's purported failure to produce documents as to September 19, 2011 order is denied.

However, Student raised for the first time in the motion for reconsideration as a grounds for continuance that pending assessments are being currently conducted by the District. Because Student raises this ground for a continuance for the first time, the District shall be afforded an opportunity to respond. Accordingly, as to Student's request for a continuance based on the pending assessments, a ruling is deferred until the District is given an opportunity to respond to that new and separate ground for a continuance.

Motion to Compel

Student asserts in her motion to compel and September 13, 2011 continuance request, and in the underlying due process hearing request, that the District has failed to provide Parent with a copy of Student's educational records in response to a January 21, 2011 request, which prevents Parent from preparing for the due process hearing, presently scheduled for October 27, 2011. The District asserts that Student's request for documents is barred by the parties' April 15, 2011 settlement agreement (Settlement Agreement). Further, the District asserts that it has already provided Parent with a copy of Student's educational records.

Student's complaint alleges that District denied her a free and appropriate public education (FAPE) by withholding educational records that were requested on January 21, 2011. Student is now requesting that District be compelled to provide these same records. Without determining the merit of Student's claim that District denied her a FAPE, and without determining whether or not District has already provided Parent with all requested educational records, District must ensure that it has provided Parent with all educational records to which she is entitled.

Regarding the District's assertion that Student's record request is barred by the Settlement Agreement, the District's contention is in fact a motion to dismiss an issue. If the District requests that OAH dismiss Student's issue related to the January 21, 2011 records request, the District needs to file a formal motion to dismiss that issue.

September 13, 2011 Continuance Request

Student's September 13, 2011 continuance request is based on the District's purported failure to produce the requested educational records. However, Student has not established good cause for a continuance because the District established a triable issue for hearing that it has in fact produced the requested records. Therefore, Student's motion for a continuance is denied.

Bifurcation, Order to Show Cause

Although not raised by either party, bifurcating the hearing in this matter may be appropriate to determine first whether the District violated Student's procedural rights by not producing Student's educational records in response to the January 21, 2011 request, which prevented Parent from participating in Student's educational decision-making process from the other issues for hearing in the District's and Student's complaints. Therefore, the parties are ordered to show cause whether OAH should bifurcate this matter for hearing to determine first Student's issue for hearing as to the January 21, 2011 request for Student's educational records.

ORDER

1. Student's motion for reconsideration as to the September 19, 2011 order denying without prejudice Student's September 12, 2011 continuance request is denied.
2. By October 7, 2011, the District shall ensure that it has provided Parent with all educational records to which she is entitled, and to inform Parent as to the results of its inquiry.
3. Student's September 13, 2011 motion for a continuance is denied.
4. A ruling is deferred as to Student's September 28, 2011 request for a continuance based on the pending assessments. The District shall reply to Student's motion by 5:00 p.m., on September 30, 2011.

5. By 5:00 p.m. on October 4, 2011, the parties shall show cause whether OAH should bifurcate this matter for hearing to decide first Student's issue for hearing regarding the January 21, 2011 request for Student's educational records. The parties shall serve their responses on OAH and the other party.

Dated: September 29, 2011

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings