

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

OAKLAND UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2013120195

ORDERS TO SHOW CAUSE,
FOLLOWING PREHEARING
CONFERENCE, GRANTING MOTION
TO CONTINUE AND SETTING
PREHEARING CONFERENCE AND
HEARING DATES

On May 30, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge Margaret Broussard, Office of Administrative Hearings. No one appeared on behalf of Student. Jennifer Rowe Gonzalez, Attorney at Law, appeared on behalf of the Oakland Unified School District (Oakland).

The undersigned ALJ reached Mother on her telephone in order to convene the PHC. Mother indicated that she was not prepared for the PHC as she was not aware of any dates in this matter because her car had been broken into and all of the paperwork regarding this case was stolen. Mother asked to continue the PHC until June 2, 2014. Mother was told to make her request once the PHC began and the attorney for Oakland was present. Mother was placed on hold and the attorney for Oakland was called. When the ALJ attempted to complete the conference call, Mother had disconnected from the call. The ALJ called Mother back three times and each time received a recording that Mother's cell phone service had been "suspended." Mother did not file a PHC statement.

APPLICABLE LAW

Under the Individuals with Disabilities Education Act (IDEA), a due process hearing must be conducted and a decision rendered within 45 days following a 30-day resolution period, after receipt of the due process notice, in the absence of an extension. (Ed. Code, §§ 56502, subd. (f), and 56505, subd. (f)(3).) Given the short time frames applicable to this case, it is critical that the parties follow orders issued by OAH and participate in advancing the matter to hearing.

Under federal and California special education law, when a student eligible for special education reaches the age of 18 years, the special education rights previously held by the parent transfer to the student. (34 C.F.R. § 300.520(a)(ii)(2006); Ed. Code, § 56041.5.) Specifically, Education Code section 56041.5 provides:

When an individual with exceptional needs reaches the age of 18, with the exception of an individual who has been determined to be incompetent under state law, the local educational agency shall provide any notice of procedural safeguards required by this part to both the individual and the parents of the individual. All other rights accorded to a parent under this part shall transfer to the individual with exceptional needs. The local educational agency shall notify the individual and the parent of the transfer of rights.

ORDER TO SHOW CAUSE

When a party files a complaint pursuant to the IDEA, that party has a duty to prosecute the case which includes disclosing his/her witnesses and documentary exhibits, file a PHC statement and otherwise prepare for hearing by attending the mandatory PHC. Mother failed to file a PHC statement and attend the PHC scheduled on today's date. This was the third attempt to convene a PHC in this matter. This failure was disruptive of the OAH hearing process and resulted in OAH incurring costs for the ALJ's preparation and conduct of the PHC without Student's participation.

Student is ordered to show cause why Student's case should not be dismissed for failure to either file the required PHC statement or participate in the PHC. **Student is ordered to file PHC statement with both OAH and the attorney for Oakland by no later than noon on June 2, 2014. Mother, as Student's representative, is also ordered to appear at the PHC at the time and date listed below. Mother shall include on the PHC statement a number where she can be reached for the PHC. Mother may use the phone at the Marcus Foster Center, located at 2850 West Street in Oakland in order to participate in the PHC, should she choose and should indicate this on the PHC statement should she choose to participate using Oakland's phone.**

Should Student fail, without excuse, to timely file the PHC statement or participate in the PHC as scheduled below, OAH will dismiss the case without prejudice.

MOTION TO CONTINUE

On May 30, 2014, prior to the beginning of the PHC, Mother asked that the PHC be continued until Monday, June 2, 2014. When the PHC convened, Oakland did not object to the continuation of the PHC but asked that the first day of hearing be vacated such that evidence would not have to be exchanged prior to determining whether Mother will participate in the continued PHC.

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 for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances are disfavored. Good cause may include the unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances; substitution of an attorney when the substitution is required in the interests of justice; a party's excused inability to obtain essential testimony or other material evidence despite diligent efforts; or another significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. (See Cal. Rules of Court, rule 3.1332(c).) OAH considers all relevant facts and circumstances, including the proximity of the hearing date; previous continuances or delays; the length of continuance requested; the availability of other means to address the problem giving rise to the request; prejudice to a party or witness as a result of a continuance; the impact of granting a continuance on other pending hearings; whether trial counsel is engaged in another trial; whether the parties have stipulated to a continuance; whether the interests of justice are served by the continuance; and any other relevant fact or circumstance. (See Cal. Rules of Court, rule 3.1332(d).)

The continuance was granted. **No further continuances will be granted in this case.** This matter is set as follows:

Prehearing Conference: June 2, 2014, at 2:00 p.m.

Due Process Hearing: June 10, 2014, at 9:30 a.m., and June 11-12, 2014, at 9:00 a.m., and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.

IT IS SO ORDERED.

DATE: May 30, 2014

/s/

MARGARET BROUSSARD
Administrative Law Judge
Office of Administrative Hearings