

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

EUREKA CITY SCHOOLS,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2015020974

ORDER FOLLOWING PREHEARING
CONFERENCE AND CONTINUING
PREHEARING CONFERENCE AND
DUE PROCESS HEARING

On March 30, 2015, a telephonic prehearing conference was held before Administrative Law Judge Rebecca Freie, Office of Administrative Hearings (OAH). Carl Corbin, Attorney at Law, appeared on behalf of Eureka City Schools (Eureka). Parent appeared on behalf of Student. The PHC was recorded.

Based on discussion of the parties, the ALJ issues the following order:

Student's Motion to Continue

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).)

On March 25, 2015, Student filed a motion to continue the PHC and due process hearing in this matter. Student claims he is attempting to obtain legal representation. Student suggested hearing dates in June 2015. Eureka filed an opposition to a continuance, claiming that Student has known since January 2015 that Eureka would be filing for due process, and has had plenty of time to retain counsel. Further, at the PHC Eureka argued that

there will be many personnel changes at Eureka at the end of the school year, and there is concern that some witnesses may thus be unavailable to testify.

It was determined that the school year ends on June 11, 2015. Parent has had conversations with more than one attorney in recent days about the possibility of representing Student in this matter, and hopes to retain legal counsel soon. This constitutes good cause for a continuance, although not one of the length Parent seeks. Based on Eureka's representations during the PHC, the PHC was continued to May 4, 2015, and the due process hearing was continued to May 12-14, 2015.

Parent was informed that if counsel is retained, OAH and Eureka's attorney must be notified immediately. Further, Parent was referred to the OAH online "Guide to Understanding Special Education Hearings" if she continues to represent Student without the assistance of legal counsel.

Student's Notice of Insufficiency

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.¹ The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of Title 20 United States Code section 1415(b)(7)(A).

The complaint is deemed sufficient unless a party notifies the Office of Administrative Hearings and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has not met the notice requirements.²

Eureka's complaint was filed on February 18, 2015. Parent indicated during the PHC that she had received the complaint more than 15 days before she filed her Notice of Insufficiency on March 25, 2015. Since Student's Notice of Insufficiency was not filed within the statutorily required timeline, Eureka's complaint is deemed sufficient.³

Student's Motion for Stay Put

Until due process hearing procedures are complete, a special education student is entitled to remain in his or her current educational placement, unless the parties agree

¹ 20 U.S.C. § 1415(b) & (c).

² 20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).

³ Parent claimed in her Notice of Insufficiency and during the PHC, that she did not understand with specificity Eureka's first issue, i.e., whether its individualized education program offer of January 12, 2015, was an offer of a free appropriate education in the least restrictive environment. It was explained that the issues will be clarified at the next PHC to be held on May 4, 2015.

otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006); Ed. Code, § 56505 subd. (d).) This is referred to as “stay put.” For purposes of stay put, the current educational placement is typically the placement called for in the student's individualized education program which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

On March 25, 2015, Student filed a motion for stay put. However, a copy of the last implemented IEP was not attached to the motion, so it was not possible to make a determination, based on the information provided, as to whether an order for stay put was necessary or warranted. Once that was explained to Parent during the PHC, she withdrew the motion.

Student's Educational Rights

On April 3, 2015, Student will attain the age of 18. Education Code section 56041.5 calls for a student's educational rights to transfer from his parent to the student, unless the student has been found incompetent. Parent indicated that Student has been conserved. Therefore she was advised to send a copy of that court order to both OAH and the attorney for Eureka in order to demonstrate that she will retain authority to make educational decisions for Student beyond his eighteenth birthday.

ORDERS

1. Student's motion to continue is granted.
2. The telephonic PHC is continued to May 4, 2015, at 1:00 a.m. OAH will initiate the phone call. All other matters relating to the hearing and not addressed in this Order will be addressed at the continued PHC.
3. The due process hearing is continued to May 12-14, 2015, beginning at 9:30 a.m. on May 12, 2015.
4. Eureka's complaint is found to be sufficient.
5. Parent will provide OAH and the attorney for Eureka with a copy of the court order of conservancy of Student.

DATE: April 1, 2015

/s/

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings