

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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| In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. NEWPORT-MESA UNIFIED SCHOOL DISTRICT, | OAH Case No. 2013071304 |
| NEWPORT-MESA UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT. | OAH Case No. 2013040881 ORDER PARTIALLY GRANTING STUDENT’S MOTION TO EXTEND TIME TO FILE CLOSING BRIEFS AND DENYING MOTION FOR TRANSCRIPT OR RECORDING OF HEARING |

On April 22, 2014, attorneys Richard Peterson and Gwendolyn Olinski of the Special Education Advocacy Clinic of the Pepperdine University School of Law (Pepeprdine) filed a Notice of Limited Representation and motions for continuing the deadline for due process hearing closing briefs and for access to the due process hearing audio tapes.

On April 24, 2014, the Newport-Mesa Unified School District (District) filed an opposition to the motion.

Procedural History

On April 22, 2013, District filed with the Office of Administrative Hearings (OAH) a Request for Due Process Hearing in OAH Case Number 2013040881 naming Parent on behalf of Student (Student) as respondent.

On May 13, 2013, Student filed a request for continuance for the purpose to retain legal counsel. On May 14, 2013, OAH granted the request and continued the hearing to August 27, 2013.

On July 30, 2013, Student, represented by counsel, Knauf Associates, filed with OAH a Request for Due Process Hearing in OAH Case Number 2013071304 naming the District as respondent. The District's case was consolidated with the Student's case by order of OAH on August 6, 2013.

The parties jointly requested several continuances. On October 4, 2013, OAH issued an order setting the hearing for December 16, 2013.

On October 25, 2013, Student's counsel withdrew from the case.

On December 2, 2013, OAH conducted a Prehearing Conference. Student filed a request for continuance for purposes of retaining legal counsel. OAH granted the Student's request and continued the hearing until January 27, 2014. The order clearly stated that no further continuances would be granted.

On January 22, 2014, Student filed a motion to continue the matter pursuant to the Americans with Disabilities Act (ADA). On January 24, 2014, OAH granted the motion and continued the hearing until March 10, 2014. The Prehearing Conference was scheduled for March 3, 2014.

On February 26, 2014, Student filed another request to continue the hearing seeking a continuance to June 23, 2014 for reasons of Mother's health. Student's motion was denied at the March 3, 2014 Prehearing Conference for failure to provide any documentation as to Mother's condition.

The undersigned Administrative Law Judge heard this matter in Costa Mesa, California on March 10 through 13, 2014, March 17, and April 1 through 3, 2014.

Student's Motion and District's Opposition

Pepperdine states that it has been "conditionally retained" for the limited purpose of assisting Student in preparation of the closing brief. Prof. Peterson, in his declaration, states that the clinic does not operate during exam time through May 5, 2014, and from the end of the school year until next August when Pepperdine resumes the next school year. Pepperdine then would need "to enlist" student volunteers to assist in the preparation of the closing brief. Pepperdine also requests that it be given a transcript of the eight day hearing or a copy of the audio recording. Pepperdine does not cite any legal authority in support of its motion.

The District opposes the motion but agreed to a seven day extension for the date to file closing briefs. The District avers that it is entitled to a speedy resolution of its complaint. The District contends that Pepperdine should not have accepted a case in which it is not

adequately staffed. The District also points out that though Professor Peterson may have been unavailable from April 15 to April 22, the assistant clinic director, Ms. Olinski, could have reviewed the documentary evidence and Student's parent's notes from the hearing, which would have permitted Student to be able to timely file his closing brief. As to the request for a transcript or audio recording of the eight day hearing, the District contends it would be prejudiced as it has been completing its closing brief based on counsel's notes. That permitting Student to receive the transcript or recording would necessitate the District having to review the transcript and start over in its brief.

Discussion

This matter has been marked by undue delays. Student was given more than ample time to procure legal representation prior to his filing of his due process request and then after the withdrawal of his counsel. Student's parent ably represented herself and her son.

Pepperdine has failed to demonstrate why it was unable to commence work on the matter following its retention on April 15, 2014. Ms. Olinski could have begun review of the evidence and notes as well as began any legal research needed. In opting to take this case, Pepperdine was required to attempt to meet the deadlines jointly agreed to by the parties and ordered by OAH.

By its own admission, Pepperdine is not currently staffed to take on this case even if the requested thirty day continuance is granted. Professor Peterson admits that he requires the assistance of "volunteer law students" who must be recruited. Should the continuance be granted, it would be expected that OAH will receive further such requests as there would not be sufficient time to review all documentary evidence and the recordings of eight days of hearing in addition to the lack of staffing. Special education law sets forth that there not be delay in resolving special education disputes. (See, Education Code, § 5605, subd. (f)(3) [The decision shall be served within 45 days of the hearing.]

As to the request for a copy or transcript of the audio recording of the hearing, this will add undue delay and prejudice to the District as it will increase costs as well result in delays which will realistically far surpass the thirty days requested.

Pepperdine can assist Student in preparing his closing brief. It can rely on the documents in evidence and the notes kept by Student's parent. Pepperdine is more than competent to assist in legal arguments in the closing argument.

ORDER

1. Student's motion for an extension to file closing briefs is partially granted. Closing briefs shall be filed no later than noon on May 9, 2014. No further extensions will be granted.
2. Student's motion for access to the hearing transcripts or audio recordings is denied.

DATE: April 28, 2014

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings