

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

CHICO UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2008090019

DECISION

Administrative Law Judge (ALJ) Peter Paul Castillo, Office of Administrative Hearings (OAH), State of California, heard this matter in Chico, California, on October 21, 2008.

Student's Father represented Student. Student was not present during the hearing.

Paul R. Gant, Attorney at Law, represented the Chico Unified School District (District). Also present throughout the hearing was David Scott, District's Director of Student Support Services.

On August 27, 2008¹ Student filed his request for due process hearing. The hearing commenced and was completed on October 21, 2008, at which time the matter was submitted for decision. There have been no continuances in this matter.

¹ Although the complaint is dated August 10, 2008, Student did not file it with OAH until August 27, 2008.

ISSUES²

1. Is Student entitled to an Independent Educational Evaluation (IEE) at public expense?³
2. Did the District violate Parent's procedural rights by not timely providing Parent copies of Student's educational records?

REQUESTED REMEDIES

Student requests an IEE at District expense and that the District provide Parent with Student's educational records.

PROCEDURAL MATTERS

STUDENT'S REQUEST TO AMEND THE COMPLAINT

On October 7, 2008, Student filed a Motion to Amend the Due Process Hearing Request (amended complaint). OAH denied the request on October 9, 2008, because Student's proposed amended complaint did not include any of the allegations in the August 27, 2008 complaint. After the opening of the record at the hearing, Father requested leave to amend the complaint to include allegations that Mr. Scott violated Student's rights by contacting Student's state parole agent. The District did not agree to allow Student to raise issues at hearing that went beyond the August 27, 2008 complaint and the October 15, 2008 Prehearing Conference Order. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).)

² These issues are those framed in the October 15, 2008 Order Following Prehearing Conference. Father did not participate in the entire telephonic prehearing conference, as he hung up after the ALJ denied his request to amend the complaint.

³ Student never identified the areas in which he sought an IEE.

Requests to amend due process hearing complaints must be made not later than five days before the hearing. (20 U.S.C. § 1415(c)(2)(E)(i)(II); Ed. Code, § 56502, subd. (e).) Student's request to amend the complaint was denied because the request was made within five days of the hearing. Additionally, OAH does not have jurisdiction to hear Student's complaint regarding Mr. Scott's purported contact with Student's parole agent. (Ed. Code, § 56501, subd. (a).) Therefore, Student's request to amend the complaint was denied.

FACTUAL FINDINGS

BACKGROUND

1. Student is 16 years old, lives with his Father within the District boundaries, and is eligible for special education services.
2. After the opening of the record, Student requested leave to amend the complaint, which was denied. After Student's request to amend the complaint was denied, Father gave a brief prepared statement and then left the hearing room. The statement was not under oath and did not contain information regarding the issues for hearing. Student did not present any testimony or documentary evidence regarding the two issues for hearing.
3. The District was given an opportunity to present testimony or documentary evidence at the hearing, but it declined. There was no testimony or documentary evidence presented or received at the hearing.

CONCLUSIONS OF LAW

BURDEN OF PROOF

1. Under *Schaffer v. Weast* (2005) 546 U.S. 49, 62 [126 S.Ct. 528], the party who filed the request for due process has the burden of persuasion at the due process hearing.

Student filed for this due process hearing and bears the burden of persuasion by the preponderance of the evidence.

IS STUDENT ENTITLED TO AN IEE AT PUBLIC EXPENSE?

2. Student asserts in the complaint that he is entitled to an IEE at District expense because the District could not offer Student an educational program reasonably calculated to provide Student with a free appropriate public education (FAPE) without this assessment information. Student never identified the area in which he sought an IEE.

3. Under both the federal IDEA and state law, students with disabilities have the right to a FAPE. (20 U.S.C. § 1400; Ed. Code, § 56000.) The term “free appropriate public education” means special education and related services that are available to the student at no charge to the parent or guardian, that meet the state educational standards, and that conform to the student’s individualized education program. (20 U.S.C. § 1401(9).) A child with a disability has the right to a FAPE under the IDEA and California law. (20 U.S.C. § 1412(a)(1)(A); Ed. Code, § 56000.)

4. The procedural safeguards of the IDEA provide that under certain conditions a student is entitled to obtain an independent educational evaluation (IEE) at public expense. (20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.502(a)(1)(2006); Ed. Code, § 56329, subd. (b).) “Independent educational evaluation” means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question.” (34 C.F.R. § 300.502(a)(3)(i)(2006).) To obtain an IEE, the student must disagree with an evaluation obtained by the public agency and request an IEE. (34 C.F.R. § 300.502(b)(1) and (b)(2)(2006).) If the district believes its evaluation was appropriate and it does not wish to pay for an IEE, it must request a due process hearing and prove that the evaluation was appropriate. (34 C.F.R. § 300.502(b)(2)(2006).)

5. Pursuant to Factual Finding 2, Student did not establish that he was entitled to an IEE at District expense.

DID THE DISTRICT VIOLATE PARENT'S PROCEDURAL RIGHTS BY NOT TIMELY PROVIDING PARENT COPIES OF STUDENT'S EDUCATIONAL RECORDS?

6. Student asserts in the complaint that the District denied Father's ability to participate in Student's educational decisionmaking process and impeded Student's ability to receive a FAPE because the District did not timely provide Father a complete copy of Student's educational records.

7. A parent has the right to examine all school records of the child and to receive copies within five calendar days after a request is made. (Ed. Code, §§ 56043, subd. (n), 56504.)

8. In *Board of Educ. of the Hendrick Hudson Central Sch. Dist. v. Rowley* (1982) 458 U.S. 176, 200 [102 S.Ct. 3034], the Supreme Court recognized the importance of adherence to the procedural requirements of IDEA. The IDEA requires that a due process decision be based upon substantive grounds when determining whether the child received a FAPE. (Ed. Code, § 56505, subd. (f)(1).) Further, a procedural violation of IDEA does not deny the student a FAPE unless it 1) impedes the student's right to a FAPE; 2) significantly impedes a parent's opportunity to participate in the educational decisionmaking process; or 3) causes a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2); see also *W.G. v. Board of Trustees of Target Range School District No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484.)

9. Pursuant to Factual Finding 2, Student did not establish that the District failed to timely provide Father with a copy of his educational records.

ORDER

Student's requests for relief are denied.

PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), this decision must indicate the extent to which each party has prevailed on each issue heard and decided. The following findings are made in accordance with this statute: the District prevailed on both issues for hearing.

RIGHT TO APPEAL THIS DECISION

The parties to this case may appeal this decision to a court of competent jurisdiction. If an appeal is made, it must be made within ninety (90) days of receipt of this decision. (Ed. Code, § 56505, subd. (k).)

Dated: October 31, 2008

/s/

PETER-PAUL CASTILLO

Administrative Law Judge

Office of Administrative Hearings