BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2016060728
v.	
LOS ANGELES UNIFIED SCHOOL DISTRICT.	ORDER TO SHOW CAUSE WHY CASE SHOULD NOT BE DISMISSED

On June 9, 2016, Parent, on Student's behalf, filed a request for due process hearing (complaint).[1] Student was 17 years of age at the time the complaint was filed. He would turn 18 years of age on September 9, 2016.

The Office of Administrative Hearings issued a Scheduling Order setting a prehearing conference on July 29, 2016 and the due process hearing on August 4, 2016.

Parent represented Student at the PHC on July 29, 2016. Parent requested a first continuance on the grounds she lacked the resources to hire an attorney and needed additional time to prepare. The PHC was continued to August 22, 2016 and the hearing was continued to September 6, 7 and 8, 2016. The parties agreed to the hearing dates understanding Student would turn 18 on September 9, 2016.

Parent represented Student at the PHC on August 22, 2016 and during the due process hearing on September 6 and 7, 2016. Student was present on both days. Mother testified, and her testimony was corroborated by Student's demeanor in the hearing room, that Student was unable to represent himself and lacked the capacity to obtain representation or transfer his educational rights to Parent.

As of September 9, 2016, Parent would no longer hold educational rights. Parent testified that she thought conservatorship proceedings had begun but that she did not know or have a case number or a hearing date. The parties agreed that it was in the interests of justice to continue the hearing to allow Parent time to obtain letters of conservatorship. Accordingly, OAH granted a second continuance to the agreed dates of February 7 and 8, 2017, based upon the parties' estimate of the amount of time it would take to obtain the letters of conservatorship.

[1] The complaint stated Parent needed a Spanish language interpreter. Accordingly, OAH provided translated copies of filings and orders from Spanish to English and from English to Spanish, and provided a Spanish language interpreter throughout the proceedings.

On January 27, 2017, Parent filed a third request for continuance on the grounds she was still waiting for a hearing for my 18-year-old son's conservatorship. Parent provided no evidence, however, that any conservatorship proceedings had actually been instituted. On February 3, 2017, OAH issued an order denying Parent's request for a third continuance because five months had elapsed since the second continuance, and there was no evidence that a request for conservatorship had been made, nor any evidence of the status of the request.

On February 6, 2017, Parent faxed to OAH a copy of a form entitled Petition for Appointment of Probate Conservator (Judicial Council form number GC-310). The form was undated and unsigned, did not have a case number or a date/time stamp from the court, or a proof of service.

The third day of the due process hearing began on February 7, 2017. Parent and Student were present. Parent stated she had attended a conservatorship clinic on November 3, 2016. Parent also brought a copy of a physician's declaration of capacity (Judicial Council form GC-335) signed by Yoon Shin, M.D. and dated November 9, 2016. The declaration corroborated Parent's September 7, 2016, testimony that Student was unable to participate in or comprehend special education due process matters. The declaration did not have a case number, a date/time stamp of filing from Superior Court or a proof of service. Parent presented no evidence proving her conservatorship or that she held educational rights.

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 unless the student has been determined to be incompetent under state law. (34 C.F.R. § 300.520(a)(ii)(2006); Ed. Code, § 56041.5.)

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 preparing for and presenting their case at hearing. Here, Parent was aware that she could not represent her son after his 18th birthday unless she obtained a conservatorship or he transferred his educational rights to her in writing. The conservatorship was addressed during the August 22, 2016 prehearing conference, at which time the hearing was continued to September 6, 7, and 8, 2016; during the hearing on

September 7, 2016, when the matter was continued to February 8, 2017; and by written order dated January 27, 2017, in which her request for further continuance was denied because there was no evidence that a conservatorship request had been made or the status of the request.

Parent is ordered to show cause on or before 1:30 p.m. on March 20, 2017, why this matter should not be dismissed. Parent may either 1) provide proof to District and the Office of Administrative Hearings that she has been appointed as Conservator for Student, or 2) provide proof that a conservatorship request has been filed and the date of the proceedings.

The parties must appear at 1:30 p.m. on March 20, 2017, and be prepared to set dates for the continued due process hearing if Parent demonstrates that the matter should not be dismissed.

IT IS SO ORDERED.

DATE: February 13, 2017

DocuSigned by:
Marian H. Tully
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MARIAN H. TULLY
Administrative Law Judge
Office of Administrative Hearings