

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENTS ON BEHALF OF STUDENT,

v.

CHINO VALLEY UNIFIED SCHOOL
DISTRICT,

OAH CASE NO. 2013010904

CHINO VALLEY UNIFIED SCHOOL
DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NO. 2012120842

ORDER TO SHOW CAUSE WHY
CASE SHOULD NOT BE DISMISSED

On February 20, 2013, a mandatory telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Deidre L. Johnson, Office of Administrative Hearings (OAH).¹ James D. Peters III, a paralegal for attorney Peter D. Collisson, appeared on behalf of Student and Parents (Student). Attorney Vivian E. Billups appeared on behalf of the Chino Valley Unified School District (District). The PHC was recorded. On February 21, 2013, the ALJ issued an Order Following Prehearing Conference which included an order granting a continuance of the initial hearing date, setting this matter for hearing on March 5 through 7, and 18 through 21, 2013.

Student's request for a due process hearing (complaint) was filed on December 26, 2012. On January 28, 2013, District filed its complaint. At all times since Student's complaint was filed, his attorney of record has been, and is Peter D. Collisson, Attorney at Law, Peter D. Collisson Prof. Corp., Special Education Law Division.

On January 28, 2013, the District filed a motion to consolidate the two cases. On February 6, 2013, OAH granted the motion and ordered the two cases to be consolidated, with the statutory timelines to be controlled by District's case. In District's case, OAH issued a scheduling order on January 30, 2013, that ordered the parties to participate in a

¹ Administrative Law Judge Margaret Broussard observed the PHC with the ALJ.

mandatory PHC on February 20, 2013. It was incumbent upon Mr. Collisson, as Student's attorney, to appear telephonically for the PHC. Mr. Collisson failed to appear for the PHC, in violation of the OAH order.

During the PHC, Mr. Peters represented that Mr. Collisson was unavailable for the PHC and had authorized Mr. Peters to handle it. When the ALJ expressed concern for the absence of the family's attorney, Mr. Peters represented that Mr. Collisson "may" be in another hearing but did not know what case it might be, did not know Mr. Collisson's schedule, and asserted that Mr. Collisson had "assigned" the present matter to him. Mr. Peters could not say whether Mr. Collisson would be available by telephone to consult for legal decisions regarding the matters covered during the PHC, if any. When asked to clarify his role on the record, Mr. Peters stated he was not acting as an advocate representing the family but solely as Mr. Collisson's paralegal.

Counsel for the District objected to Mr. Peters' representation of Student during the PHC, indicated she had never met Mr. Collisson, and argued Mr. Peters was acting as an advocate. For purposes of the PHC only, District's objection was overruled but did not excuse Mr. Collisson's absence. When the ALJ inquired as to Mr. Collisson's legal representation of Student for hearing, Mr. Peters represented that Mr. Collisson would appear at the hearing to represent Student "some" of the time but Mr. Peters intended to handle most, if not all of the hearing. Mr. Peters did not have Mr. Collisson's calendar when he agreed to the continued dates for hearing. In addition, a review of the OAH dockets for both cases shows that Mr. Collisson did not sign any of Student's documents and that Mr. Peters, a paralegal, has signed Student's documents.

OAH is an independent state agency obligated to provide a neutral and fair forum for special education hearings. In that regard, Student and Parents have the right to represent themselves, or to be represented by an advocate, or an attorney licensed in good standing with the State Bar of California. In this case, Student and Parents are represented by an attorney who failed to appear for the mandatory PHC and who appears to plan to allow an unsupervised paralegal to handle most, if not all, of Student's hearing.

The role of a paralegal is delineated by statute. A paralegal must work under the direction and supervision of a licensed attorney, and is expressly prohibited from providing legal advice or engaging in the unlicensed practice of law. (Bus. & Prof. Code section 6450, subds. (b)(1) and (b)(5).) A paralegal may only represent clients before a state administrative agency if such is permitted by statute, court rule, or administrative rule or regulation. ((Bus. & Prof. Code section 6450, subd. (a).) During the PHC, Mr. Peters orally moved to amend Student's complaint, conduct that constituted the unlicensed practice of law. Mr. Peters made no attempt to telephone Mr. Collisson prior to making the motion. As noted in the Order Following Prehearing Conference, the filing of an amended complaint restarts the applicable federal and California statutory timelines for the due process hearing unless the parties waive application of that requirement. (20 U.S.C. §1415(c)(2)(E)(ii).) Hence, the motion affected the fundamental due process hearing rights of Student and Parents. The ALJ declined to entertain the motion and found that Mr. Peters had no authority as a paralegal to

independently waive the family's rights under the law to a timely hearing and to restart all timelines were the motion to be granted.

OAH therefore issues this Order to Show Cause (OSC) in advance of the hearing to determine whether Attorney Collisson is prosecuting this case on behalf of Student, whether the case should be dismissed, or whether Parents are representing themselves and Student in pro per. It is unreasonable for the school district to incur the time and expenses of hearing preparation, including the preparation of numerous witnesses and documentary exhibits, if Student's attorney of record does not intend to proceed to handle this case and if Student does not otherwise have representation. OAH is required to issue a timely decision within 45 days of the filing of District's case, unless a continuance is granted for good cause. Given the short time frames applicable to these cases, it is critical that the parties follow orders issued by OAH and that the legal representatives, if any, participate in advancing this matter to hearing. (20 U.S.C. § 1415(f)(1)(B)(ii); 34 C.F.R. § 300.51; Ed. Code, § 56502, subd. (f).)

Attorney Collisson is ordered to show cause in writing why this case should not be dismissed for his failure to participate, prosecute or advance the case for hearing on behalf of Student and Parents. Mr. Collisson is ordered to file a written response with OAH to be received no later than 5:00 p.m. on Thursday, February 28, 2013, by facsimile transmission to (916) 376-6319, or through the mail. Mr. Collisson's response shall address why he did not appear for the PHC on February 20, 2013, and whether he intends to go forward to the hearing on behalf of Student and Parents.

A telephonic OSC conference shall take place at 2:00 p.m. on Friday, March 1, 2013. The following parties are specifically ordered to appear: PETER D. COLLISSON, JAMES D. PETERS III, and PARENTS. OAH shall initiate the telephone call to all of the parties. The parties shall submit any change in their telephone numbers for the conference to OAH by noon on that day. The parties shall be prepared to discuss the status of the case and whether Student's complaint should be dismissed. The hearing dates remain as scheduled.

Should Mr. Collisson fail, without excuse, to timely file a response as ordered above, or participate in the telephonic OSC conference, OAH may dismiss this case or transfer the case to Parents to represent themselves in pro per without further notice.

ORDER

1. An Order to Show Cause Why Case Should Not be Dismissed is hereby issued. Attorney Collisson shall file a written response no later than 5:00 p.m. on Thursday, February 28, 2013.
2. A telephonic OSC Conference shall be conducted on Friday, March 1, 2013, at 2:00 p.m. All parties are ordered to appear as specified above.

3. Should Attorney Collisson fail, without excuse, to timely file a response as ordered above, or participate in the telephonic OSC conference, OAH may dismiss this case or take other appropriate action without further notice.

Dated: February 22, 2013

/s/

DEIDRE L. JOHNSON
Administrative Law Judge
Office of Administrative Hearings