

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

LIVE OAK ELEMENTARY SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2013090049

PARENT ON BEHALF OF STUDENT,

v.

LIVE OAK ELEMENTARY SCHOOL
DISTRICT.

OAH CASE NO. 2013060082

ORDER FOLLOWING PREHEARING
CONFERENCE GRANTING
CONTINUANCE, SETTING NEW
PREHEARING CONFERENCE AND
HEARING DATES, DENYING MOTION
FOR RECONSIDERATION AND
DENYING MOTION TO DISMISS
COMPLAINT

On October 7, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Theresa Ravandi, Office of Administrative Hearings (OAH). Laurie E. Reynolds, Attorney at Law, appeared on behalf of the Live Oak Elementary School District (District). Parent appeared on behalf of Student. The PHC was recorded.

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

1. Hearing Dates, Times, and Location. This matter is currently set for hearing beginning on October 15, 2013. At the start of the PHC, Student made a verbal motion to continue the PHC and hearing dates so that he can retain legal representation. This is the second request for a continuance of this matter. The District did not object to Student's continuance request.

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. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Speedy resolution of the due process hearing

is mandated by law and continuance of the hearing may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f)(3).) In ruling upon a motion for continuance, OAH is guided by the provisions found within the Administrative Procedure Act and the California Rules of Court that concern motions to continue. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, rule 3.1332.) Generally, continuances of matters are disfavored. (Cal. Rules of Court, rule 3.1332(c).)

Student has established good cause for a continuance and the motion is granted. All dates are vacated and the matter will be set on the following dates as agreed to by the parties:

Prehearing Conference: November 25, 2013, at 1:00 p.m.

Due Process Hearing: December 9, 2013, at 1:30 p.m., December 10 through 12, 2013, at 9:00 a.m., and continuing day to day, as needed and at the discretion of the ALJ.

The hearing shall take place at the District's offices located at 984-1 Bostwick Lane, Santa Cruz, California 95062.

2. Notice to Witnesses. The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure that the witnesses will be available to testify. A witness will not be regarded as unavailable for purposes of showing good cause to continue the hearing if the witness is not properly notified of the hearing date or properly subpoenaed, as applicable.

3. Pending Motions.

Student's Motion for Reconsideration

Student was allowed to make a verbal motion for reconsideration of the September 5, 2013 Order Granting Consolidation given his representation that he was not aware that he only had three days to respond to the District's motion to consolidate.¹ Student previously filed an opposition to the motion to consolidate on September 5, 2013. The ALJ has read and considered that opposition.

OAH will generally reconsider a ruling upon a showing of new or different facts, circumstances, or law justifying reconsideration, when the party seeks reconsideration within a reasonable period of time. (See, e.g., Gov. Code, § 11521; Code Civ. Proc., § 1008.) The party seeking reconsideration may also be required to provide an explanation for its failure to

¹ Parent indicated that a particular OAH proof of service was not accurate although she was not clear which documentation she did not receive in a timely manner. ALJ Susan Ruff granted the District's motion to consolidate on September 5, 2013, prior to receiving Student's opposition.

previously provide the different facts, circumstances or law. (See *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1199-1200.) Motions for reconsideration require the moving party to show new facts or law which brings the appropriateness of the prior order into question. Here, Student alleges no new facts, circumstances, or law in support of the request for reconsideration, and his request is denied.

Student's Motion to Dismiss District's Complaint

On October 2, 2013, Student filed a motion to dismiss the District's due process hearing request (complaint) on the grounds that the complaint is frivolous and intended to delay the provision of a free appropriate public education (FAPE) to Student. On October 4, 2013, the District filed an opposition on the grounds that the District has a right to file its complaint and that Student is improperly seeking a judgment on the pleadings.

Special education due process hearing procedures extend to the parent or guardian, to the student in certain circumstances, and to "the public agency involved in any decisions regarding a pupil." (Ed. Code, § 56501, subd. (a).) A "public agency" is defined as "a school district, county office of education, special education local plan area, . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs." (Ed. Code, §§ 56500 and 56028.5.)

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education," and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].)

Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc.....), special education law does not provide for a summary judgment procedure.

Student has provided no legal authority to support his request for dismissal of the District's case. The District has the right, as a public agency, to file a complaint with the OAH regarding any matter relating to the identification, evaluation, or educational placement of Student or the provision of a FAPE. While OAH will dismiss claims that are factually outside of its jurisdiction, here Student's motion to dismiss is not limited to matters that are beyond the jurisdiction of OAH and instead seeks a ruling on the merits. Student fails to

provide any authority that would require OAH to hear and determine the equivalent of a motion for summary adjudication without giving the District the opportunity to develop a factual record at hearing in support of its claim that the June 2013 individualized education program (IEP) is reasonably calculated to provide Student a FAPE. Accordingly, there is no legal basis for dismissal and Student's motion is denied.

Student's Request for Educational Records

Student indicated that he has requested a complete copy of his educational records and that the District has failed to provide this. District's counsel indicated that it was her understanding that the District has provided all records. The parties are ordered to meet and confer regarding which records Student believes have not been provided, and the District is to provide such records as required by law.

4. Other Matters. All other matters relevant to preparing for hearing, including clarification of issues and identification of witnesses and exhibits, will be addressed at the PHC on November 25, 2013. The parties have filed their PHC statements. If they seek to amend their PHC statements, parties are reminded that they must file any amended statement not later than three business days prior to the PHC. All other orders contained in the OAH Scheduling Order dated September 4, 2013, remain in effect.

5. Settlement. The parties are encouraged to continue working together to reach an agreement before the due process hearing. The parties shall inform OAH in writing immediately should they reach a settlement or otherwise resolve the dispute before the scheduled hearing. Dates for the PHC and hearing will not be cancelled until letters of withdrawal or a joint request for dismissal with the signature page of a signed agreement has been received by OAH.

IT IS SO ORDERED.

Dated: October 7, 2013

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings