

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

OAKLAND UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2013120195

ORDER TO SHOW CAUSE AS TO
WHETHER CASE SHOULD BE
DISMISSED, GRANTING
CONTINUANCE AND SETTING
MEDIATION, PREHEARING
CONFERENCE AND HEARING
DATES

On May 19, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Margaret Broussard, Office of Administrative Hearings (OAH). Mother appeared on behalf of Student. Jennifer Rowe Gonzalez, Attorney at Law, appeared on behalf of the Oakland Unified School District (Oakland) and was accompanied by John Rusk, compliance officer for Oakland.

At the PHC held on May 16, 2014, Mother was informed that since Student has turned 18 years old, Student must either appear at the PHC himself or transfer his educational rights to her. The PHC was rescheduled to May 19, 2014. At the May 19, 2014 PHC, Mother appeared and stated that Student was unwilling to accompany her because he had plans with his father and that she needed more time to obtain a written transfer of educational rights from Student to Mother.

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. (34 C.F.R. § 300.520(a)(ii)(2006); Ed. Code, § 56041.5.) Specifically, Education Code section 56041.5 provides:

When an individual with exceptional needs reaches the age of 18, with the exception of an individual who has been determined to be incompetent under state law, the local educational agency shall provide any notice of procedural safeguards required by this part to both the individual and the parents of the individual. All other rights accorded to a parent under this part shall transfer to the individual with exceptional needs. The local educational agency shall notify the individual and the parent of the transfer of rights.

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 disclosing his/her witnesses and documentary exhibits and otherwise prepare for hearing by attending the mandatory prehearing conference. Student has not transferred his educational rights to Mother, nor did Student appear at the prehearing conference. This failure was disruptive of the OAH hearing process and resulted in OAH incurring costs for the ALJ's preparation and conduct of the PHC without Student's participation or transfer of educational rights.

Student is ordered to show cause why Student's case should not be dismissed for failure to either participate in the prehearing conference or transfer his educational rights to his mother. **Student is ordered to file a notice of transfer of educational rights or a notice that he will participate without a transfer of educational rights with OAH by no later than 4:00 p.m. on May 22, 2014. This may be filed with OAH by delivering a copy of the notice to John Rusk at his Oakland office by 4:00 p.m. on May 22, 2014. Mr. Rusk will then fax the notice to OAH to (916) 376-6319. Oakland is not expected to file a written response.**

Student's notice of transfer of educational rights shall contain, at a minimum, a statement that Student transfers his educational rights to his mother, her name, the date the transfer is effective and Student's signature.

Should Student fail, without excuse, to timely file either the notice of transfer of educational rights to his mother or notice that he will participate without a transfer of rights as ordered above, OAH will dismiss the case.

MOTION TO CONTINUE

On May 19, 2014, this matter was continued by order of the ALJ to allow either Student to participate in the hearing process or for Student to transfer his educational rights to Mother, so she can participate on his behalf. Neither party objected to the continuance.

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 for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances are disfavored. Good cause may include the unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances; substitution of an attorney when the substitution is required in the interests of justice; a party's excused inability to obtain essential testimony or other material evidence despite diligent efforts; or another significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. (See Cal. Rules of Court, rule 3.1332(c).) OAH considers all relevant facts and circumstances, including the proximity of the hearing date; previous continuances or delays; the length of continuance requested; the availability of other means to address the problem giving rise to the request; prejudice to a party or witness as a result of a continuance; the impact of granting a continuance on other pending hearings; whether trial counsel is engaged in another trial; whether the parties have stipulated to a continuance; whether the interests of justice are served by the continuance; and any other relevant fact or circumstance. (See Cal. Rules of Court, rule 3.1332(d).)

This matter is set as follows:

Mediation:	May 28, 2014, at 9:30 a.m. at the Oakland Office of Administrative Hearings, 1515 Clay Street, Suite 206, Oakland, CA 94612
Prehearing Conference:	May 30, 2014, at 1:00 p.m.
Due Process Hearing:	June 9, 2014, at 1:30 p.m., June 10-11, 2014 at 9:30 a.m., and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.

IT IS SO ORDERED.

DATE: May 19, 2014

/s/

MARGARET BROUSSARD
Administrative Law Judge
Office of Administrative Hearings