

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FULLERTON SCHOOL DISTRICT.

OAH CASE NO. 2014020217

ORDER FOLLOWING PREHEARING
CONFERENCE; CONTINUANCE OF
PREHEARING CONFERENCE;
ORDER TO SHOW CAUSE; ORDER
LIMITING ISSUE AND DISMISSING
ISSUE

On August 1, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge Peter Paul Castillo, Office of Administrative Hearings.¹ Ricardo Silva, Attorney at Law, appeared on behalf of Fullerton School District. ALJ Castillo attempted to reach Student's Mother, who is representing Student, at approximately 3:00 p.m., 3:10 p.m., and 3:25 p.m. to participate in the PHC, and left her telephone messages to contact OAH. Mother did not attempt to contact OAH. The PHC was recorded.

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

1. Continuance of Prehearing Conference. Based on the non-appearance of Mother, the PHC is rescheduled to August 8, 2014, at 1:00 p.m., and OAH shall initiate the PHC. Student is ordered to serve the PHC conference statements on opposing party and OAH no later than 5:00 p.m. on August 6, 2014. The hearing date of August 12, 2014, remains on calendar, without prejudice to the District to request a continuance at the August 8, 2014 PHC.

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.

¹ At the PHC, ALJ Castillo stated that ALJ Judith L. Pasewark is still assigned to conduct the hearing, and that the parties still retained their right for a peremptory challenge if the hearing is reassigned to another ALJ, including ALJ Castillo.

2. Order to Show Cause. Because Mother was not present for the PHC nor did she submit a continuance request of the PHC, Mother shall serve on opposing party and OAH no later than 5:00 p.m. on August 6, 2014, a response why this matter should not be dismissed with prejudice for failure to participate, prosecute or advance the matter, and a declaration under penalty of perjury why Mother did not submit a PHC statement or attend the August 1, 2014 PHC. Failure to submit such a response shall be cause for the dismissal of this matter with prejudice. If Student submits a response, the District may submit a reply by 10:00 a.m. on August 8, 2014.

3. Motions. *Motion to Dismiss:* On June 24, 2014, District filed a motion with OAH seeking to limit the time in contention regarding Issue 1, asserting that claims that occurred before February 5, 2012, are barred by the two-year statute of limitations. District also asserts that Issue 3 should be dismissed as OAH does not have jurisdiction to hear Student's claims.

The statute of limitations for due process complaints in California is two years, consistent with federal law. (Ed. Code, § 56505, subd. (l); see also 20 U.S.C. § 1415(f)(3)(C).) However, title 20 United States Code section 1415(f)(3)(D) and Education Code section 56505, subdivision (l), establish exceptions to the statute of limitations in cases in which the parent was prevented from filing a request for due process due to specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint, or the local educational agency's withholding of information from the parent that was required to be provided to the parent.

The purpose of the Individuals with Disabilities Education Act (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].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

OAH does not have jurisdiction to entertain claims based on Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), Section 1983 of Title 42 United States Code, the Americans with Disability Act (ADA) (Title 42 U.S.C. §§ 1201, et seq.), and the Unruh Civil Rights Act (Civ. Code, § 51).

The District's motion to limit claims in Issue 1 to events that occurred on or after February 5, 2012, is granted as Student's complaint contains no allegations that District misrepresented facts to Mother that caused her to believe that the problem had been resolved, prevented her from filing a hearing request, or withheld legally required information. As to Issue 3, OAH has no jurisdiction over the legal claims, and therefore Issue 3 is dismissed.

4. 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. In addition, if a settlement is reached within five days of the scheduled start of the due process hearing, the parties shall also inform OAH of the settlement by telephone at (916) 263-0880.

IF A FULL AND FINAL WRITTEN SETTLEMENT AGREEMENT IS REACHED AFTER 5:00 P.M. THE DAY PRIOR TO HEARING, THE PARTIES SHALL LEAVE A VOICEMAIL MESSAGE REGARDING THE SETTLEMENT AT (916) 274-6035. THE PARTIES SHOULD ALSO LEAVE CONTACT INFORMATION SUCH AS CELLULAR PHONE NUMBERS OF EACH PARTY OR COUNSEL FOR EACH PARTY. THE PARTIES SHOULD SIMULTANEOUSLY FAX THE SIGNATURE PAGE OF THE SIGNED AGREEMENT OR A LETTER WITHDRAWING THE CASE TO THE OAH AT THE FAXINATION LINE at 916-376-6319.

Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received by OAH. If an agreement in principle is reached, the parties should plan to attend the scheduled hearing unless different arrangements have been agreed upon by the assigned ALJ. The assigned ALJ will check for messages the evening prior to the hearing or the morning of the hearing.

5. Failure to comply with this order may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

DATE: August 4, 2014

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings