

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

DAVIS JOINT UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2015020729

ORDER FOLLOWING PRE-HEARING
CONFERENCE, SETTING FILING
DATE FOR COMPLAINT, VACATING
DUE PROCESS HEARING DATES,

On March 2, 2015, a telephonic prehearing conference (PHC) was held before Administrative Law Judge Joy Redmon, Office of Administrative Hearings. Attorney Elizabeth Rho-Ng appeared on Davis Joint Unified School District's behalf. Attorney Tania Whiteleather appeared on Student's behalf. The PHC was recorded.

Determination that Complaint Was Filed February 23, 2015:

Davis Joint Unified School District filed a request for due process hearing on February 12, 2015, naming Student as respondent. The complaint was served that day on the Office of Administrative Hearings and Tania Whiteleather, Student's attorney of record in another matter. Mother was not listed on the proof of service. On February 24, 2015, OAH received a copy of a proof of service from Davis indicating that Mother was served a copy of the complaint on February 23, 2015, via electronic mail. On February 25, 2015, OAH received a declaration from Mother stating that she had not received notice of the due process complaint from Davis nor a scheduling order from OAH.¹

On February 27, 2015, OAH received a notice of representation from Ms. Whiteleather stating she was now the attorney of record on Student's behalf. Ms. Whiteleather also requested that all dates in the matter be continued because she and not Mother had received the initial complaint.

Davis opposed the motion to continue asserting that the Individuals with Disabilities Education Act requires that expedited hearings occur within 20 school days of the date the complaint requesting the hearing is filed and that it filed the complaint on February 12, 2015.

¹ OAH's records include a proof of service stating that it sent a Scheduling Order Notice of Dual Hearing Dates Including Expedited Hearing, Prehearing, and Mediation to Mother on February 17, 2015, via U.S. mail.

(See 34 C.F.R. § 300.532 (c)(2).) Davis asserted, therefore, that no continuances can be granted for expedited cases. Davis also argued that as Ms. Whiteleather is Student's attorney of record in another case involving the same parties she was obliged to forward Student a copy of the compliant upon receipt. Alternatively, Davis asserted that Ms. Whiteleather and Mother collectively had notice of Davis's complaint when it was originally filed as the parties engaged in ongoing settlement negotiations to potentially resolve all complaints.

Ms. Whiteleather argued that proper notice is a foundational principle of administrative law, that she is not obligated to forward documents received on matters where she is not retained as counsel, and that she had only engaged in settlement discussions regarding other pending due process cases where she was the attorney of record and not this one specifically.

Applicable Law and Discussion

For special education matters, service of notice, motions, or other writings pertaining to special education due process hearing procedures, such as the complaint, must be served on the party named in the complaint or if the party is a party with an attorney or other authorized representative of record *in the proceeding*, to the party's attorney or other authorized representative. (See Cal. Code Regs., tit. 5 § 3083 et seq.)

Student's motion to continue was denied as there is no provision in the IDEA and corresponding State law specifically permitting an expedited due process hearing be continued. Regardless, proper notice of any due process complaint is required, as noted above, and is also a fundamental tenant of due process of law as contained in the Fourteenth Amendment to the United States Constitution. Despite the fact that Ms. Whiteleather received notice of the complaint at the time it was filed, she was not Student's authorized representative in this proceeding at that time. Therefore, this matter is not deemed to have been filed until Mother was sent a copy of the compliant. Ms. Rho-Ng stated that she has a proof of service indicating that Mother was served on February 23, 2015. Ms. Rho-Ng is ordered to submit a copy of that proof of service to OAH and Ms. Whiteleather. Based upon Ms. Rho-Ng's representation on the record, this matter was deemed filed on February 23, 2015. If a copy of the proof of service is not received or shows services on a date later than February 23, 2015, Ms. Whiteleather may file a motion for reconsideration of the date the complaint is deemed filed.

Motion to Vacate Unexpedited Hearing Dates

On February 25, 2015, Davis filed a motion to have all issues in this matter expedited and to vacate the unexpedited hearing dates. Ms. Whiteleather opposed the motion on the ground that three business days had not passed for her to respond. Ms. Whiteleather was given until the close of business on March 2, 2015, to respond. Ms. Whiteleather timely

opposed the motion because she believes that the issue of Student's placement requires a full hearing and that the matter should be consolidated with the Student filed matter².

Pursuant to the complaint, Davis asserted two issues in its hearing request. They are as follows:

Issue 1: Whether maintaining Student's current placement at Da Vinci Charter Academy is substantially likely to result in injury to Student or to others; and

Issue 2: Whether the District's proposed placement of Student at Sierra School Eastern-Upper constitutes an appropriate Interim Alternative Educational Setting for Student for no more than forty-five (45) school days.

Applicable Law and Discussion

The parent of a child with a disability who disagrees with any decision regarding placement under §§ 300.530 and 300.531, or the manifestation determination under § 300.530(e), or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing. (34 C.F.R. § 300.532 (a).) Additionally, the hearing officer is vested with the authority under the expedited hearing provisions to order a change of placement to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the Student's current placement is substantially likely to result in injury to the child or to others. (*See* 34 C.F.R. § 300.532 (b)(2)(ii).)

Both issues raised in Davis's complaint are properly identified as issues to be resolved under the expedited hearing provisions. The complaint asserts no non-expedited issues. Therefore, the new scheduling order to be sent out following this order will schedule expedited dates only. Further, Ms. Whiteleather's contention that the matter must be unexpedited in order to have a "full hearing" is without any basis. Expedited hearings are full and complete hearings. The only difference is the timelines under which the hearings are scheduled and the decision issued.

ORDER

1. Ms. Rho-Ng is ordered to submit a copy of the proof of service documenting that Mother was served with a copy of Davis's due process complaint in this matter on February 23, 2015³.

² No motion for consolidation has been filed in either case and no ruling is being made regarding consolidation in this order.

³ The proof of service was timely received by OAH on March 2, 2015, after business hours.

2. This expedited due process complaint is deemed filed on February, 23, 2015.
3. All dates previously set are vacated and a new scheduling order will be sent containing new prehearing conference and due process hearing dates.
4. The motion to expedite all of Davis's issues in this matter is granted.
5. The scheduling order as described in Order 3 above will only contain expedited dates and this matter will no longer be considered a dual case.

IT IS SO ORDERED.

DATE: March 3, 2015

/s/

JOY REDMON
Administrative Law Judge
Office of Administrative Hearings