

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

DELTA CHARTER HIGH SCHOOL, NEW
JERUSALEM SCHOOL DISTRICT, AND
SAN JOAQUIN COUNTY OFFICE OF
EDUCATION.

OAH Case No. 2015090690

ORDER FOLLOWING PREHEARING
CONFERENCE AND GRANTING
REQUESTS FOR CONTINUANCE
AND CHANGE OF LOCATION OF
EXPEDITED HEARING

On October 23, 2015, a telephonic prehearing conference was held before Administrative Law Judge Lisa Lunsford, Office of Administrative Hearings. Mother appeared on behalf of Student. David Thoming appeared on behalf of Delta Charter High School. Steve Payne appeared on behalf of New Jerusalem Elementary School District. Appearing on behalf of the San Joaquin County Office of Education was Kathleen Skeels, the Assistant Superintendent of Special Education and SELPA Director. The PHC was not recorded.¹ The PHC began at approximately 3:45 p.m. and concluded around 4:20 p.m.

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

1. Student's Request for Continuance. This matter was set to begin hearing on October 28, 2015. On October 22, 2015, Student filed a request for continuance based on Respondents' failure to provide copies of Student's educational records. Mother affirmed during the PHC that she has not yet received Student's entire set of records. Respondents have made the records available at Student's school and attempted to provide the records via email. Mother has been unable to obtain the records and maintains that a review of these records is necessary for her to adequately prepare for hearing. Respondents did not oppose the continuance. This was a second request for 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.) However, when a matter is filed as an expedited due process hearing on a disciplinary matter, the hearing must occur within 20 school days of receipt of the due

¹ At the start of the PHC, all parties were informed of the ALJ's inability to record the PHC, and all parties consented to participate in the PHC without a recording.

process complaint, and a decision must be issued within 10 school days of the expedited hearing. (20 U.S.C. § 1415(k)(4)(B).) There is no provision of law authorizing the continuance of an expedited hearing. Further, in light of the strict time requirements for expedited hearings, continuances are disfavored.

In this case, however, Student established good cause for a brief continuance. Accordingly, the request to continue the expedited portion of this matter is granted. All dates are vacated and the matter is continued as follows:

Prehearing Conference: 11/6/15 at 10:00 a.m.

Due Process Hearing: 11/12/15 at 9:30 a.m. and 11/13/15 at 9:00 a.m., and continuing day to day, Monday through Thursday, as needed at the discretion of the ALJ.

2. Student's Request for Educational Records. Parents may request copies of their child's educational records at any time and are entitled to receive those copies within five business days of their request. (Ed. Code, § 56504.) Education records under the IDEA are defined by the Federal Education Records Privacy Act (FERPA) to include "records, files, documents, and other materials" containing information directly related to a student, other than directory information, which "are maintained by an educational agency or institution or by a person acting for such agency or institution." (20 U.S.C. § 1232g(a)(4)(A); Ed. Code, § 49061, subd. (b).) Respondents are ordered to provide copies of Student's educational records such that Mother receives the records within five business days. These records must be provided in a manner other than email or requiring pick up in Respondents' offices and that is reasonably calculated to ensure Mother's receipt of the records, such as via U.S. mail or personal delivery.

3. Student's Request to Change the Hearing Location. On September 24, 2015, and again on October 22, 2015, Student requested that the hearing not be held in Tracy and instead be held in Patterson, which is accessible to Mother by public transportation. Due process hearings "shall be held at a time and place reasonably convenient to the parent or guardian" and the child involved. (Ed. Code, § 56505, subd. (b); 34 C.F.R. 300.515(d).) "Reasonably convenient" does not mean that the hearing may be located anywhere a parent chooses. Due process hearings are generally scheduled in the offices of the school district as the student generally resides within the district's coverage area. If the parent requests an alternative location that appears reasonably convenient, the district may show prejudice and the equities may be weighed. Due process hearings must be fair and conducted so that the parties can exercise their rights as provided for by law. (Ed. Code § 56505(c) & (e).)

Mother confirmed during the PHC that she cannot drive her car due to a broken window and signal lights. Mother also stated that there is no public transportation that she can take to travel to Tracy from her residence in Crow's Landing. Respondents did not oppose this request. Student's request is granted. Delta and New Jerusalem are ordered to coordinate contacting the local education agency where Student lives in order to explore

whether that agency can provide a facility for the hearing in this matter. In the alternative, Delta and New Jerusalem should consider hotel conference rooms or other public buildings that may have a suitable conference room. Delta and New Jerusalem are further ordered to report the results of their efforts and any arrangements made in writing to OAH by October 30, 2015.

4. San Joaquin County Office of Education's Request to be Dismissed as a Party. During the PHC, Ms. Skeels requested that the San Joaquin County Office of Education be dismissed as a party from this matter. The San Joaquin COE is ordered to submit this request in writing by October 30, 2015. This written request shall address the COE's role in this matter as well as Student's allegation that a psychologist contracting with the COE attended one or more manifestation determination meetings at issue in this matter.

5. Other PHC Matters. All other matters relevant to preparing for hearing, including clarification of the issues and identification of witnesses and exhibits, will be addressed at the PHC on November 6, 2015. Delta and New Jerusalem filed a joint PHC statement on October 23, 2015. Student is required to file a PHC statement at least three business days prior to the PHC and provide a copy of the statement to all Respondents. As indicated in the October 16, 2015, notice of telephonic PHC order, the PHC statement shall include the following:

- a. Each party's estimate of the time necessary to complete the due process hearing;
- b. A concise statement of the issues that remain to be decided at the due process hearing and the proposed resolution of such issues, based upon the issues raised in the due process hearing request;
- c. The name of each witness the party may call at the due process hearing, a brief summary of the subject of the expected testimony of the witness, and a description of the issue to which the testimony of the witness relates;
- d. The name and address of each expert witness the party intends to call at the due process hearing, a brief summary of the opinion that the expert is expected to give, and a description of the issue to which the testimony of the expert relates;
- e. A list of documentary evidence that the party intends to present, and a description of any physical or demonstrative evidence; and
- f. The need for an interpreter or special accommodation at the due process hearing.

The parties should also note the requirement under California Education Code section 56505, subdivision (e)(7), which requires the parties to exchange all documents they wish to present at the hearing at least five business days prior to the hearing. (Ed. Code, § 56505, subd. (e)(7).)

6. 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.

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

IT IS SO ORDERED.

DATE: October 26, 2015

/s/

LISA LUNSFORD

Administrative Law Judge

Office of Administrative Hearings